



# **Guidelines for the Role and Function of Statutory Officers**

Appointed under the Mental Health  
(Compulsory Assessment and  
Treatment) Act 1992

2022

## Disclaimer

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Please note that these guidelines are not intended as a substitute for informed legal opinion. Any concerns individuals may have should be discussed with appropriate legal advisors.

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# Abbreviations and definitions

|                                 |   |
|---------------------------------|---|
| CP(MIP) Act                     | Criminal Procedure (Mentally Impaired Persons) Act 2003   |
| Code of Rights or Code          | Code of Health and Disability Services Consumers' Rights  |
| DAMHS                           | Director of Area Mental Health Services as defined in section 2(1) of the Mental Health Act   |
| DAO                             | duly authorised officer appointed pursuant to section 93 of the Act   |
| district inspector              | a person appointed pursuant to section 94 of the Act to be a district inspector; includes a person appointed pursuant to that section to be a deputy district inspector   |
| Te Whatu Ora/Health New Zealand | the Crown entity established under the Pae Ora (Healthy Futures) Act 2022   |
| medical practitioner            | as defined in section 2(1) of the Act, 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 Health Act or the Act    | Mental Health (Compulsory Assessment and Treatment) Act 1992  |
| mental health practitioner      | as defined in section 2 of the Act: <ul style="list-style-type: none"><li>• a medical practitioner</li><li>• a nurse practitioner or</li><li>• a registered nurse practising in mental health (which is also defined in section 2 of the Act)</li></ul>                               |
| NZBORA                          | New Zealand Bill of Rights Act 1990   |
| <i>patient</i>                  | as defined in section 2(1) of the Act, a person who is: <ul style="list-style-type: none"><li>(a) required to undergo assessment under section 11 or section 13; or</li><li>(b) subject to a compulsory treatment order made under Part 2; or</li><li>(c) a special patient</li></ul> |

|  |   |
|--|---|
| <i>proposed patient</i>                      | <p>as defined in section 2A of the Act, a person:</p> <ul style="list-style-type: none"> <li>(a) starts being a <i>proposed patient</i> when an application is made under section 8A; and</li> <li>(b) stops being a <i>proposed patient</i> when a mental health practitioner records a finding— <ul style="list-style-type: none"> <li>(i) under section 10(1)(b)(i), in which case the person does not become a <i>patient</i>; or</li> <li>(ii) under section 10(1)(b)(ii), in which case the person becomes a <i>patient</i>.</li> </ul> </li> </ul> |
| responsible clinician                        | as defined in section 2(1) of the Act, in relation to a <i>patient</i> , the clinician in charge of the treatment of that <i>patient</i>  |
| registered nurse practising in mental health | <p>as defined in section 2 of the Act, a health practitioner who:</p> <ul style="list-style-type: none"> <li>(a) is, or is deemed to be, registered with the Nursing 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 nursing and whose scope of practice includes the assessment of the presence of mental disorder as defined under this Act; and</li> <li>(b) holds a current practising certificate.</li> </ul>                                 |

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# Introduction

These *Guidelines for the Role and Function of Statutory Officers Appointed under the Mental Health (Compulsory Assessment and Treatment) Act 1992* support the effective and lawful use of the Mental Health (Compulsory Assessment and Treatment) Act 1992 ('the Act' or 'the Mental Health Act'). These guidelines are issued pursuant to section 130(1)(a) of the Act, which states that the Director-General of Health may from time-to-time issue guidelines for the purposes of the Act.

The objective of these guidelines is to provide a framework of action that health practitioners appointed as statutory officers can use to develop their competencies under the Mental Health Act, to provide a high-quality service following the required standards. The Ministry expects that these guidelines will enhance the provision of services by prioritising a human rights and recovery approach, following principles that promote equity of care and treatment and least restrictive care. Health practitioners should make every effort to provide best practice initiatives and use the Mental Health Act as a last resort after they have considered all other alternatives.

These guidelines sit alongside the *Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992* (Ministry of Health 2020a) and the accompanying *Human Rights and the Mental Health (Compulsory Assessment and Treatment) Act 1992* (Ministry of Health 2020b). It will often be appropriate for statutory officers to refer to those guidelines for more complete guidance.

Key changes and emerging issues that have prompted us to revise these guidelines are:

- the growing influence of rights-based approaches and the need to better promote these within the parameters of the current Mental Health Act
- the need to give greater emphasis to our obligations under Te Tiriti o Waitangi – the Treaty of Waitangi
- the impact of *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction* (Government Inquiry into Mental Health and Addiction 2018), particularly through feedback from people with lived experience and their families and whānau on how they experience current administration of the Act
- the implications of the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021. In particular, the term 'mental health practitioner' has replaced 'medical practitioner' in certain sections of the Act. 'Mental health practitioner' has a particular meaning that may be different to how that term is ordinarily used or defined (see the definitions section above or section 2AA of the Act).

The Mental Health Act introduced a number of statutory roles on its enactment: Directors of Area Mental Health Services (DAMHSs), duly authorised officers (DAOs) and responsible clinicians. This document describes, in basic terms, the knowledge, skills and attitudes these roles require. It does not provide a particular syllabus for training or an exhaustive manual; rather, it is a guide that can assist a decision as to

whether a person is competent to act as a statutory officer, both for the appointer and the appointee.

These guidelines only apply to statutory officers appointed under the Mental Health Act. They do not apply to statutory officers appointed under the Substance Addiction (Compulsory Assessment and Treatment Act) 2017.

The Mental Health Act, like all legislation, is subject to change. The Ministry makes every effort to ensure that these guidelines are up to date but notes that all statutory officers should ensure that they are aware of any changes to the Act that affect their practice.

## Use of the terms ‘patient’ and ‘proposed patient’ in this document

Many people disagree with using the terms ‘patient’ and ‘proposed patient’ in the context of mental health. This is understandable; such terms can exacerbate stigma, in that they define people who experience mental illness as people managed through medical treatment, rather than as individuals with choices and autonomy. Preferred terms include ‘consumer’, ‘person with lived experience’ and ‘tangata whai ora’ (Opai 2020). Where possible, we have used such terms. However, under the Act, the terms ‘patient’ and ‘proposed patient’ each have a specific legal meaning, so we have italicised them within these guidelines (*patient* and *proposed patient*) to denote their statute-specific meaning.



# 1 The Mental Health Act guidelines and other legislative regimes

These guidelines should be read in the context of the two overarching guidelines promulgated under section 130 of the Act:

- *Human Rights and the Mental Health (Compulsory Assessment and Treatment) Act 1992* (Ministry of Health 2020b)
- *Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992* (Ministry of Health 2020a: 'Mental Health Act guidelines').

*Human Rights and the Mental Health (Compulsory Assessment and Treatment) Act 1992* provides guidance on how to think about and apply human rights, recovery approaches and supported decision-making when implementing the current Mental Health Act.

The Mental Health Act guidelines contain a detailed description of the sections of the Act. In particular, they address the importance of Te Tiriti and its constitutional constraints. It is especially important to follow these recommendations.

The Mental Health Act guidelines also cover clinical concepts, exclusion criteria, consultation with family or whānau, application of compulsory assessment and treatment, compulsory treatment orders, regulations on special and restricted *patients*, use of force and reviews and judicial inquiries.

When exercising powers under the Act in respect of a person, statutory officers must ensure that the services of an interpreter are provided for that person if their first or preferred language is a language other than English (including te reo Māori and New Zealand sign language), and it is practicable to provide the services of an interpreter. Statutory officers must ensure, as far as reasonably practicable, that the interpreter provided is competent (see section 4 of the Mental Health Act guidelines and section 6 of the Act). Statutory officers must exercise their powers under the Act with:

- proper recognition of the importance and significance to the person of the person's ties with their family, whānau, hapū, iwi and family group
- proper recognition of the contribution those ties make to the person's wellbeing; and
- proper respect for the person's cultural and ethnic identity, language and religious or ethical beliefs (see sections 4 and 5 of the Act).

All health practitioners conducting an assessment examination of a *proposed patient* under section 9 of the Act, and responsible clinicians providing assessments of, or treatments to, *patients*, are required to consult the *patient* or *proposed patient's* family or whānau, unless there are reasonable grounds to consider that consultation is not reasonably practicable or is not in the best interests of the *patient* or *proposed patient* (section 7A of the Act). In deciding whether consultation with the family or whānau is in the best interests of a *proposed patient* or *patient*, the practitioner must consult the *proposed patient* or *patient* (section 7A(4) of the Act). Consultation obligations are ongoing. Section 5 of the Mental Health Act guidelines provides additional guidance on consultation with family or whānau.

In addition to this, during assessment, health practitioners should encourage the *patient* or *proposed patient's* family or whānau to assist and support the process by sharing what they know of the individual's history and any changes in the *patient* or *proposed patient* that they may have noticed. Clinicians and treating teams should enable *patients* to express their wishes when they are well.

There are multiple ways in which a *patient* or *proposed patient* may have expressed their wishes as to who to consult when they become unable to make decisions, what treatment they do or do not want in such situations, or who can make decisions on their behalf in certain circumstances. These include:

- individual care or support plan (see Criteria **3.2.1** of Ngā Paerewa Health and disability services standard NZS 8134:2021)
- advance directives (see Right 7(5) of the Code of Health and Disability Services Consumers' Rights)
- appointment of an enduring power of attorney (see Part 9 of the Protection of Personal and Property Rights Act 1988)
- personal orders under the Protection of Personal and Property Rights Act 1988, including an order to appoint a welfare guardian.

Clinicians and treating teams should ensure this information is included in the tangata whai ora's notes so that they can take it into account in future decision-making if the person lacks mental competence. Teams should also enable discussion with family or whānau about such plans to increase the chances of acting according to wishes that the tangata whai ora expressed competently in the past.

Although not statutorily specified, some statutory officers may have had greater contact with family members than the assessing health practitioner or responsible clinician has, and so may be best able to facilitate consultation between the health practitioner or responsible clinician and the tangata whai ora's family or whānau. Statutory officers should provide whānau with the name of a contact person to facilitate consultation and ask them to nominate a contact person in the family to be a reference point for consultation to occur. For further information on consultation and ongoing obligation to work with family and whānau, see the Mental Health Act guidelines.

In addition to this, statutory officers must comply with relevant New Zealand laws that confer rights on people, such as the New Zealand Bill of Rights Act 1990 (NZBORA), the Human Rights Act 1993 and the Code of Health and Disability Services Consumers'

Rights (the Code of Rights). All health practitioners must comply with these laws as part of their ongoing professional responsibilities and competencies.

The Code of Rights applies to health and disability service providers, including any person providing a health service to the public or any section of the public. Such providers should exercise their powers under the Mental Health Act and general duties of statutory officers in accordance with the Code.

# 2 Statutory officers under the Mental Health Act

## 2.1 Definition

The Act does not define the term 'statutory officer'. For the purpose of this guidance, a statutory officer is a person appointed under the provisions of the Act, on the advice of the Director of Mental Health (the Director) or Director of Area Mental Health Services. Statutory officers operate independently from the Ministry of Health.

## 2.2 Knowledge

All statutory officers appointed under the Act should have a sound knowledge and understanding of:

- all relevant aspects of the Act, including:
  - the definition of mental disorder and criteria for compulsory assessment and treatment
  - the intent and meaning of relevant sections and the specific paperwork and records required each part of the Act requires
  - limitations of statutory powers
  - how to access services to support people who are experiencing mental distress, illness or disorder
  - interactions with other roles designated in the Act (especially district inspectors and the Director of Mental Health).
- the development, implementation and practice of effective approaches to the assessment and treatment of people with mental illness
- the role culture plays in wellbeing, including an understanding of the principles of Te Tiriti o Waitangi and their obligations under Te Tiriti, the implications of partnership and active protection, and sensitivity to cultural identity and personal beliefs
- issues creating and maintaining inequitable health outcomes for Māori
- lived experiences of mental illness or mental disorder
- the role of family or whānau in the assessment and treatment of people with mental illness
- general statutory provisions relating to special *patients* and restricted *patients*

- the legislative regimes and international conventions relevant to the provision of health and disability services, particularly in the context of the Act, including but not limited to:
  - internationally:
    - the United Nations Convention of the Rights of Persons with Disabilities
    - the United Nations Optional Protocol to the Convention against Torture
    - the United Nations Convention on the Rights of the Child
    - the United Nations Declaration on the Rights of Indigenous Peoples
    - the International Convention on the Elimination of all forms of Racial Discrimination
  - nationally:
    - the NZBORA
    - the Human Rights Act 1993
    - the Health Act 1956
    - the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CP(MIP) Act)
    - the Protection of Personal and Property Rights Act 1988
    - the Oranga Tamariki Act 1989, also known as the Children’s and Young People’s Well-being Act 1989
    - the Children's Act 2014
    - the Care of Children Act 2004
    - the Health and Disability Commissioner Act 1994
    - the Code of Rights
    - the Pae Ora (Healthy Futures) Act 2022
    - the Health and Disability Services (Safety) Act 2001
    - the Privacy Act 2020
    - the Health Information Privacy Code 2020
    - the Public Service Act 2020
    - the Policing Act 2008
    - the Crimes Act 1961
    - the Criminal Procedure Act 2011
    - the Victims’ Rights Act 2002
    - the Land Transport Act 1998
    - the Manatū Hauora Ngā Pirihi mana o Aotearoa Memorandum of Understanding between the Ministry of Health and New Zealand Police 2021 (Ministry of Health 2021a).

## 2.3 Attitudes

The following attitudes should be evident in statutory officers:

- a focus on human rights and lived experiences
- a focus on equity of health outcomes for Māori
- cultural awareness and cultural safety (kawa whakaruruhau)

- a strong recovery and wellbeing focus, and a focus on embedding a culture of aroha to promote manaakitanga and whanaungatanga for wellbeing
- an attitude of self-reflection and self-awareness towards their own practice
- sensitivity to other people, their experience and their context (which may include but is not limited to Indigenous status, age or generation, gender, sexual orientation, socioeconomic status, ethnicity, religious or spiritual belief, immigration status and disability)
- sensitivity when working with advocates and interpreters, and a willingness to enable people to gain access to such supports
- respect for privacy and confidentiality
- a best-practice approach to compulsory mental health treatment
- respect for the intent of the Act.

# 3 Directors of Area Mental Health Services

Directors of Area Mental Health Services are highly qualified and experienced mental health professionals who also hold senior roles within a mental health service. Appointment by the Director-General of Health confers upon a DAMHS a set of powers and responsibilities related to administering the Act in a specified area. These responsibilities can be categorised as either statutory administration or clinical oversight. In addition, a DAMHS contributes to service development and works alongside mental health and addiction service executive leadership to ensure operational decisions consider the intent of the Mental Health Act.

## 3.1 Skills

The DAMHS must have the following skills:

- the ability to undertake a mental status examination
- excellent interpersonal and relationship skills
- the ability to effectively consult and communicate with family and whānau
- clinical skills in engagement, problem solving and conflict resolution
- familiarity with skills required to review processes when examining failure of service provision
- the ability to negotiate and discuss management plans with responsible clinicians
- good written and oral presentation skills
- the ability to liaise with community agencies, iwi, marae committees, Pacific peoples and church groups, and work with them in a cooperative manner
- the ability to deal appropriately with members of the public
- the ability to investigate complaints
- the ability to educate other agencies and the public on the Act
- the ability to lead and monitor other clinicians through the use of supervision, peer reviews and debriefing procedures
- the initiative to seek specific and specialist advice when appropriate
- the ability to maintain accurate records relating to compulsory assessment and treatment.

## 3.2 Clinical oversight

A DAMHS has a number of mental health service clinical management responsibilities, arising from their statutory responsibilities.

The role includes ensuring that a robust, comprehensive and holistic assessment and treatment planning process is in operation to influence decisions regarding a *proposed patient* or *patient's* need for compulsory assessment and/or treatment and ensuring discharge if appropriate. In some cases, the DAMHS will also act as a responsible clinician (where they meet the relevant criteria to be a responsible clinician, as set out in section 7 of the Act and section 5 of these guidelines). In such a case, the DAMHS should arrange for another responsible clinician to peer review their clinical decisions.

Directors of Area Mental Health Services must monitor the quality of clinical decision-making, ensure adequate recording of clinical decisions and take steps to rectify breaches of *patients'* rights. Accordingly, the Act requires all DAMHSs to receive and keep various documents and certificates. In practice, DAMHSs will delegate responsibility for some paperwork and electronic health records to other staff, but the ultimate responsibility rests with the DAMHS.

A DAMHS may, at times, need to veto clinical decisions taken in respect of *patients* and *proposed patients*, or refer *patients* for a second opinion. The Act is not specific about responsibilities in this context, but the process is an important part of providing quality mental health care.

## 3.3 Operational influence

Directors of Area Mental Health Services have influence on the delivery of care beyond purely clinical care. They should advocate for the provision of services where there are demonstrable shortages. They must authorise and designate sufficient health professionals to be DAOs within their own area (section 93(1) of the Act). They must also maintain an appropriate directory of DAOs' telephone numbers so that they can contact DAOs when they require information or assistance under the Act. Directors of Area Mental Health Services should also have a role in planning and purchasing resources for mental health services and are responsible for ensuring that DAOs and responsible clinicians carry out their legislative roles. The DAMHS should focus on embedding a culture of aroha to promote manaakitanga and whanaungatanga for wellbeing.

A DAMHS should have strong and effective working relationships with:

- mental health and addiction service executive leadership groups
- specialist mental health and addiction clinical services
- local district inspectors
- Ministry of Health officials
- non-government organisations providing mental health, addiction and disability services



- regional specialist health services
- health organisation planning and funding departments
- general hospital clinical services
- primary health care providers
- local police
- local iwi and community cultural organisations
- local lived experience and family or whānau networks
- Ministry of Justice officials
- Family Court officials.

## 3.4 Statutory administration and functions

As administrative clinicians, DAMHSs are likely to be involved in the management of all aspects of the Act in the area in which they are appointed.

A DAMHS reports to the Director of Mental Health. The Director is responsible for the general administration of the Act at a national level (section 91 of the Act). Therefore, a DAMHS will normally act as the main point of contact between the Director and mental health and addiction services in their area.

A DAMHS is responsible for ensuring that there is a responsible clinician assigned to each *patient* (section 7 of the Act). A DAMHS, therefore, requires administrative influence to promote the employment of appropriate numbers of mental health professionals within mental health and addiction services.

The DAMHS must:

- ensure that the person in charge of a hospital or service keeps certain records and registers (section 129 of the Act) and sends certain information to the Director (sections 42 and 43 of the Act)
- every three months, prepare a written report on the exercise of their powers, duties and functions under the Act for the previous three-month period and give the report to the Director (section 92(4) of the Act)
- send notices relating to the hospital or any specified class of *patients* in the hospital as requested by the Director or Director-General (section 133A of the Act).

In practice, much of this work will be completed by other staff members in a mental health and addiction service, but the DAMHS retains the final responsibility for making and keeping records and responding to requests for information from the Ministry of Health.

This section outlines the specific statutory requirements where DAMHSs are required to be involved in the assessment and treatment process.

## 3.4.1 Management and clinical oversight of the assessment and treatment process

The provision of certificates to the DAMHS by responsible clinicians is intended to allow DAMHSs to maintain the integrity of the compulsory assessment and treatment process and provide clinical oversight of each *patient's* assessment and treatment.

The Act tasks DAMHSs with receiving applications for an assessment of a person (section 8 of the Act) and making the necessary arrangements for the *proposed patient* to immediately undergo an assessment examination (section 9 of the Act), although in practice these duties will often fall to other staff members, such as DAOs.

### 3.4.1(a) Provision of documents to *patients*

A DAMHS should ensure that copies are made of all documents received in relation to an application for a compulsory treatment order. Under the Act, the DAMHS must ensure that all the information required in each section under the Act is given to the *patient*, including:

- a notice requiring the *patient* to attend an examination by a family court judge (if available) or district court judge under section 18 of the Act
- a notice requiring the *patient* to attend the court hearing of the application for the compulsory treatment order under section 19 of the Act.

In practice, this will be achieved by ensuring processes are in place that ensure that other staff members (including responsible clinicians) provide those documents to the *tangata whai ora*.

Under section 10 of the Act, a mental health practitioner must give or send a copy of the certificate of preliminary assessment to each of the following:

- the *patient*
- any welfare guardian of the *patient*
- the applicant for assessment
- the *patient's* principal caregiver
- the primary health care provider who usually attends the *patient*.

Where appropriate and if the *patient* consents, any additional information should also be shared with family or *whānau*, so they are able to support the care arrangements for the *patient*. It is important to note that section 7A of the Act requires mental health practitioners to consult with family or *whānau* unless there are good reasons not to.

### 3.4.1(b) Section 113A: Application for warrants

A DAMHS may apply to the District Court for a warrant to authorise any constable to take a *patient* or *proposed patient* to a place specified in the warrant (section 113A(3) and (4) of the Act). A District Court judge, or registrar if a judge is not available, may only grant such a warrant if they are satisfied that:

- the *proposed patient* or *patient* is refusing to attend at the place at which they are required to attend; or
- the *patient* is absent from the hospital without leave, or the *patient's* leave of absence from the hospital has expired or has been cancelled.

A DAMHS should apply for such a warrant where a DAO cannot safely exercise their powers relating to a *patient* or *proposed patient* under section 40(2) without police assistance and it is reasonably practicable to obtain a warrant (that is, it is not an urgent or emergency situation). If the police need to enter the premises where the *patient* or *proposed patient* is under section 41(2), the police must apply for a warrant to enter the premises (section 113A(7) of the Act).

These requirements mean that DAMHS should foster a strong relationship with local police. The Ministry of Health and the New Zealand Police have agreed to a Memorandum of Understanding intended to form the basis of a relationship between police and mental health services to facilitate this (Ministry of Health 2021a), but specific arrangements should be agreed to on a local level.

Section 113A only applies to a *patient* or *proposed patient*. The powers of police where a person may be mentally disordered but is not yet subject to the Act are outlined in sections 109 and 110C of the Act.

It should be kept in mind that the person in charge of a hospital has the power to detain a *proposed patient* (in respect of whom a section 9 notice has been completed) at a hospital for a maximum period of the shorter of six hours or the time it takes to conduct an assessment examination (section 113(1) of the Act). If a *proposed patient* (in respect of whom a section 9 notice has been completed) can be safely detained, it is preferable to detain them until the most suitable practitioner to assess them becomes available, if this can occur within a six-hour period.

In practice, the DAO must determine whether police assistance is required to assist them to undertake the actions required (section 41 of the Act). The DAO should be discussing the requirements for a warrant with police and should notify the DAMHS that a warrant is required.

It is expected that, as good practice, a DAMHS will not exercise their power under section 40 of the Act without a warrant, if it would be reasonably practicable to obtain a warrant. A DAMHS must confirm warrant procedures with their local courts, as this may vary.

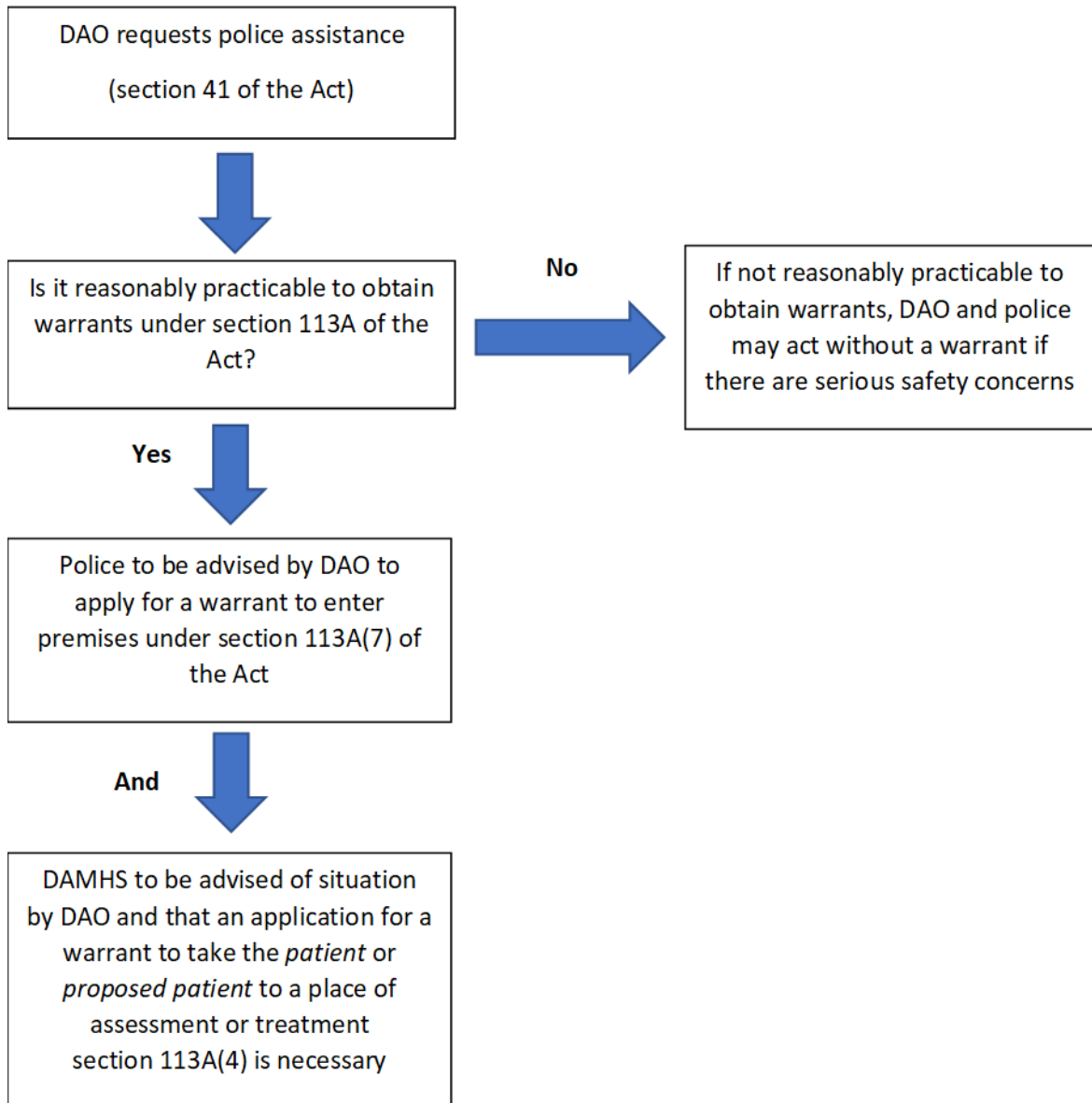
It is required by the Act that a constable will not exercise the power in section 41 without a warrant, if it would be reasonably practicable to obtain a warrant. Circumstances in which it is not reasonably practicable to obtain a warrant could include:

- an emergency situation
- a situation occurring outside of normal business hours (that is, when courts are unable to process the warrant application)
- a situation in which the distance between the nearest court and the locality of the *proposed patient* is considerable.

Two warrants are required.

- A DAMHS application for a warrant to take the person to a place of assessment or treatment (section 113A(4) of the Act).
- A constable application for a warrant to enter premises (section 113A(7) of the Act).

Under section 113A of the Act, the warrant application process is as follows.



## 3.4.2 Section 7 and 9: Approval of responsible clinicians, psychiatrists or other mental health practitioners to carry out assessment examinations

In respect of each *patient*, the DAMHS must ensure that at all times there is a responsible clinician assigned who is:

- a psychiatrist approved by the DAMHS; or
- some other registered health professional who, in the DAMHS' opinion, has undergone training in, and is competent in, the assessment, treatment and care of persons with mental disorders.

The Act requires that, wherever practicable, an assessment examination of a *proposed patient* under 17 years is conducted by a psychiatrist practicing in the field of child psychiatry (section 86 of the Act).

In practice, the DAMHS is unlikely to be personally involved in the allocation of a responsible clinician to each *patient*. This means that the DAMHS must ensure that there are processes and policies in place that ensure a responsible clinician is assigned to each *patient* as soon as they become *patients* (for example, on the issuing of a certificate under section 10(1)(b)(ii) of the Act).

If it is necessary to assign a different responsible clinician (for example, one with different skills), the DAMHS should ensure there are process and policies in place that support the assignment of a new responsible clinician as soon as is practicable. In addition, the DAMHS should ensure there are processes in place whereby an on-call or on-duty psychiatrist or suitably qualified mental health practitioner can assume responsible clinician responsibilities outside of normal working hours, in weekends and public holidays.

When the DAMHS or a DAO receives notice of an application made under section 8A from the mental health practitioner who issues the certificate accompanying the application, the DAMHS or DAO must make the necessary arrangements for the *proposed patient* to immediately undergo an assessment examination. The arrangements required are set out in section 9(2) of the Act.

Section 9(3) of the Act provides that an assessment examination must be conducted by a health practitioner who is:

- a psychiatrist approved by the DAMHS for the purposes of the assessment examination, or of assessment examinations generally; or
- if no such psychiatrist is reasonably available, a medical practitioner (such as a senior psychiatric registrar) or nurse practitioner (not being the one who issued the certificate under section 8B(4)(b) of the Act) who, in the opinion of the Director, is suitably qualified to conduct the assessment examination or assessment examinations generally.

It is important to note that, although a responsible clinician may be any suitable registered health professional, a clinician carrying out an assessment examination must be a mental health practitioner as defined in section 2A of the Act.

'Psychiatrist' is defined by section 2 of the Act as 'a medical practitioner whose scope of practice includes psychiatry'. A medical practitioner holding a scope of practice in any specialty must have completed vocational training and completed a postgraduate qualification for the relevant scope as approved by the Medical Council of New Zealand under section 21 of the Health Practitioners Competence Assurance Act 2003. Registrars are registered in a general scope of practice, and do not fall under this definition.

'Reasonably available' is not defined within the Act and will depend on the circumstances. For example, the expertise that is reasonably available in a well-staffed urban centre may be very different to that in a more isolated rural area. Nevertheless, the term should be interpreted consistently. When considering the expertise that is reasonably available, the following should be considered:

- who is able to be called
- how far away they are
- the normal duty rosters
- the clinical demands of the situation.

Examples of situations in which a psychiatrist is not reasonably available may include:

- after hours, when there is no psychiatrist scheduled on the duty roster (for example, in mental health services where the duty rosters are populated by registrars, nurse practitioners and medical officers of special scale)
- when the usual psychiatrist is absent for other reasons (such as ill health) and cannot be replaced by another psychiatrist
- when the psychiatrist is involved in other urgent work that means they are unable to attend the assessment in a timely manner and cannot be replaced by another psychiatrist
- when the psychiatrist is too far away to be able to attend the assessment in a timely manner and cannot be replaced by another psychiatrist.

Whenever possible (and particularly in circumstances involving one of the last two examples), the mental health practitioner conducting the assessment should discuss the particulars of the case over audio-visual link (AVL) or the telephone with the psychiatrist.

It is the responsibility of the DAMHS to apply to the Director of Mental Health for consideration of a suitably qualified individual health practitioner to be approved to conduct an assessment examination for the purpose of section 9(3). The Act does not define 'suitably qualified'. The Mental Health Act guidelines provide that, for example, when deciding on making an appointment under section 9(3), the Director of Mental Health will take into account the training and experience of the practitioner. In a more difficult case that requires a fine degree of judgement, a more experienced senior practitioner with a greater level of expertise is needed. If substance use is also involved, consultation with a suitably qualified addiction practitioner may be appropriate.

In practice, it may be too onerous for the DAMHS to consider the complexity of all assessments being undertaken, but their involvement is advisable in certain circumstances; for example, when a less experienced practitioner is assessing a person who appears to have complex health needs.

### 3.4.3 Section 71: Designating seclusion rooms

*Patients* must only be placed in seclusion in a room or other area that is designated for the purpose of seclusion by, or with the approval of, the DAMHS. Guidance on designating rooms for seclusion is available in the Ministry of Health seclusion guidelines, available on the Ministry of Health website. The Ministry is reviewing its current guidelines; a new version will be available by the end of 2022.

### 3.4.4 Section 75: Complaints of breach of rights

Under s 75 of the Act, where a *patient* or someone else on the *patient's* behalf complains that their rights under Part 6 of the Act have been denied or breached in some way, the matter must be referred to a district inspector or an official visitor by the DAMHS, another statutory officer or the health professional to whom the complaint was made. If the district inspector or official visitor is satisfied after an investigation that the complaint has substance, they must report the matter to the DAMHS together with any recommendation that they think fit. The DAMHS must take necessary steps to rectify the matter and report to the Director of Mental Health on the steps taken.

If the *patient* or other complainant is not satisfied with the outcome of the complaint, they may refer the case to the Review Tribunal for further investigation. After the Review Tribunal's investigation, the Review Tribunal must report the matter to the DAMHS together with such recommendations the Review Tribunal thinks fit. The DAMHS must take all necessary steps to rectify the matter.

The section 75 process does not limit other complaint avenues available to the *patient* or complainant (for example, their right to complain to the Health and Disability Commissioner).

### 3.4.5 Section 92A: Delegation by a Director of Area Mental Health Services

A DAMHS can delegate any of their powers, duties and functions under the Act (except the power of delegation) to a person who is suitably qualified to exercise that power, duty or function and is approved by the Director of Mental Health or Deputy Director. When requesting approval of proposed delegates, the DAMHS should aim to give the Director a choice of possible delegates. The DAMHS, or their delegate, must tell the Director or Deputy Director when the DAMHS is intending to be or is absent from duty because they are ill or on approved leave, who the delegate is, and when the delegation is revoked.

Section 92B outlines the provisions applying to delegations under section 92A. In summary:

- the delegation must be signed and in writing
- the delegate may only exercise the delegated powers, duties or functions when the DAMHS is absent from duty because they are ill or on approved leave
- a delegation continues in force until it is revoked
- the DAMHS may revoke a delegation at any time by written notice to the delegate.

The Ministry recommends that a DAMHS carefully consider the requirements of sections 92A and 92B before making a delegation.

In practice, many of the DAMHS' powers in the Act will be exercised by another employee in the mental health service acting under the general direction of the DAMHS. For example, reports may be provided to the Director by an administrative staff member, and applications for assessment under section 8 of the Act may be received by the DAO organising the assessment examination under section 9. The DAMHS retains responsibility for the completion of such processes.

### 3.4.6 Section 93: Maintaining a list of contact numbers for information and assistance

Section 93(1)(b) requires a DAMHS to maintain an appropriate directory listing of a telephone number to ring when information or assistance is required under the Act. In practice, this will usually be the contact number for mental health emergencies, as DAOs are generally rostered on duty within mental health crisis teams in Te Whatu Ora district mental health and addiction services.

### 3.4.7 Section 99B: Delegation by persons in charge of hospitals

A number of statutory powers and duties under the Act are granted to the person in charge of a hospital (defined as the chief executive of the hospital in section 2(1) of the Act). These include:

- powers to admit and detain *patients* (section 113)
- powers to transfer *patients* (not special *patients* or restricted *patients*) to another hospital or service (section 127(3)).

In practice, a DAMHS or another person managing a mental health service is most likely to directly exercise these powers. Those in charge of a hospital should therefore delegate in writing the relevant powers under section 99B.

In the case of admissions under section 113, sufficient delegations should be made so that there is always a delegate on site with the power to admit *patients* and *proposed patients* to hospital.



The DAMHS should assess the need for delegations under section 99B and make them known to the person in charge of the hospital.

The DAMHS should ensure that the person in charge of the hospital has signed delegations in place for the statutory powers and duties outlined above. These delegations must be accessible to the Director or any other statutory official on request.

The Act also requires the DAMHS to ensure that the person in charge of a hospital undertakes certain duties. These include:

- the duty to send admission information to the Director (section 42) (in practice, this information will be uploaded into the special patient management System)
- the duty to send information to the Director after certain events (section 43)
- the duty to keep records (section 129).

### 3.4.8 Section 123: Vetting of incoming correspondence

Sections 123 and 124 of the Act provide that the responsible clinician may, with the approval of the DAMHS, direct that any letter or other postal article addressed to a *patient* or put out by a *patient* for posting be opened and checked by a registered nurse or the *patient's* case manager if there are reasonable grounds for believing that the receipt or dispatch of the letter or other postal article by the *patient* could be detrimental to their interests and treatment.

Under section 125(3), where any letter or other postal article is withheld pursuant to section 123 or section 124, the *patient* shall be informed of the fact, unless the responsible clinician is satisfied that to do so would be detrimental to their interests and treatment.

Correspondence from one of the people specified in section 123(3) must not be opened or withheld.

The phrase 'detrimental to the interests of the *patient*' is not defined in the Act, but the Ministry considers that this includes anything that is likely to adversely impact on the person's recovery or to place the *patient* at risk of harm. Responsible clinicians should document the reasons why correspondence was withheld.

District inspectors have oversight over the power to vet and withhold correspondence. Withheld correspondence must be laid before a visiting district inspector or official visitor under section 97(2)(b) on their next visit to the hospital, or on arrangement with the district inspector or official visitor, and they may make a recommendation to a DAMHS regarding the correspondence under section 75.

The Act does not contemplate the monitoring of electronic communications such as emails and text messages. The Ministry of Health considers that there is no legal requirement for inpatient facilities to supply computers or mobile phones for *patient* use, but such amenities may be appropriate in certain facilities, and it is important to

respect a *patient's* freedom of expression (including the right to correspond electronically). If *patients* have access to such devices, responsible clinicians have the same powers to examine and withhold correspondence as if the communications were letters but may not withhold electronic communications to or from the people specified in section 123(3).

### 3.4.9 Section 127: Transfer of *patients*

The power to transfer *patients* (other than special and restricted *patients*) between hospitals and services may be exercised by agreement between the person in charge of each hospital under section 127(3). In practice this power may be delegated to a DAMHS under section 99B. A transfer will normally be organised to move a *patient* to a more appropriate setting for treatment, such as a more or less restrictive unit, or a hospital setting closer to family.

If a DAMHS (under delegation from the person in charge of a hospital under section 99B) decides to transfer a *patient* to another hospital or service, the DAMHS must ensure that the *patient's* health needs, and any risks arising from the transfer, are identified so that appropriate transport, resources, and staff can be arranged. The Director may also order a mandatory transfer under section 127(1).

### 3.4.10 Record-keeping

Section 129 of the Act requires a DAMHS to ensure that in every hospital or service, the person in charge keeps, in respect of *patients* subject to the Act, the following:

- a record of the admission and discharge of *patients* subject to the Act
- a register of restraint and seclusion
- any other registers and records prescribed or required by the Director.

A DAMHS is responsible for keeping all records required to be provided to them by the Act. In addition to documentation of assessment and treatment processes, this requirement will include records for the following provisions of the Act:

- section 6A – the use of AVL technology
- section 71(2)(e) – seclusion events
- section 110A(3)(b) – emergency sedation
- section 122B(4)(b) – the use of force
- section 129(1)(b) – the use of restraint and seclusion.

The Director expects that DAMHSs will review the records and discuss procedures with the mental health practitioner who made the record if necessary. The Director also requires DAMHSs to keep records of the matters they are required to report on in their quarterly reports.

The Mental Health Act guidelines (Ministry of Health 2020a) provide detailed further guidance on the use of AVL technology under section 6A, emergency sedation under section 110A and the use of force under section 122B.

Specific guidance on the use of seclusion is available in the Ministry of Health seclusion guidelines, available on the Ministry of Health website. In addition, the use of seclusion and restraint is governed by the section on here taratahi (restraint and seclusion) within the Ngā Paerewa Health and Disability Services Standard (NZS 8134:2021).

Section 97 of the Act requires that responsible clinicians provide the district inspector or official visitor with the records and documentation that are required to be kept under the Act that the district inspector or official visitor requires to be produced.

### 3.4.11 Reporting requirements

Section 92(4) requires that DAMHSs submit quarterly reports to the Director of Mental Health, in the form prescribed by the Director, on the exercise of their powers, duties and functions under the Act for the previous three months. A modifiable version of the quarterly reporting form can be obtained from the Office of the Director.

The Director requires that DAMHSs submit reportable event notification forms when a serious event occurs. A modifiable version of the reportable event notification form can be obtained from the Ministry of Health website.

Directors of Area Mental Health Services must report four categories of event:

- death under s 132 of the Act
- suspected suicide of a voluntary *inpatient*
- special *patient* event
- media attention.

#### **Reporting the death of a *patient***

If a person dies while in official custody or care, section 14 of the Coroners Act 2006 requires that the death be reported to police as soon as practicable. Family and whānau should also be informed of the death as soon as reasonably practicable. In addition, section 132 of the Act specifically requires a responsible clinician to report the death of a *patient* (whether within or outside the hospital) to police immediately once they learn of the death, and to report it to the Director within 14 days after the death (see section 4.2.2 below for further detail). In practice, typically the relevant DAMHS will notify the Director. Therefore, responsible clinicians should immediately notify the DAMHS in addition to police once they learn of the death of a *patient*. The Ministry recommends that any serious event involving a *patient* under the Act is brought to the attention of the district inspector.

### 3.4.12 Monitoring duly authorised officers

The DAMHS should review or ensure a review of DAOs yearly to ensure maintenance of clinical competency and adequate professional development. Yearly reviews should include:

- ensuring that adequate professional development and clinical supervision has occurred

- identifying areas of attitude, skill or knowledge that require addressing and developing a plan to address deficits
- identifying employer provision issues (such as resources, professional college membership or clinical mentoring) that would benefit the DAO
- following up any corrective actions taken during the year in response to service incidents.

## 3.5 Appointment process

The appointment of DAMHSs should consider the skills, knowledge and attitude of candidates as described in section 3.2 and 3.3 of these guidelines. It is also essential that a nominee for DAMHS appointments have:

- a minimum of 12 months experience in a mental health service in Aotearoa New Zealand
- demonstrated ability to develop key relationships
- references from at least two mental health specialists, preferably where one is a DAMHS
- demonstrated leadership within a mental health service
- demonstrated confidence from seniors and peers that the nominee could carry out the role of DAMHS
- demonstrated knowledge and attitudes required of statutory officers as outlined in sections 2.2 and 2.3, including knowledge of the role culture plays in wellbeing, an understanding of the principles and obligations of Te Tiriti o Waitangi, an understanding of the implications of partnership and active protection, and sensitivity to cultural identity and personal beliefs.

The chief executive of the health services in the area that the DAMHS will be covering sends nominations for DAMHS appointments to the Director. The Director expects that a nominee will be a senior mental health clinician who has undergone training in, and is competent in, the assessment, treatment and care of persons with a mental disorder. The Director-General of Health appoints DAMHSs under section 92 of the Act.

The following factors may also be considered at the discretion of the Director-General of Health:

- length of time a nominee has resided in Aotearoa New Zealand
- potential conflicts of interest

Nominations for DAMHS appointments to the Director-General must include:

- a clear statement that the DAMHS will receive appropriate support and authority to undertake their duties
- curriculum vitae and other documentation that establishes the proposed candidate has the requisite skills attitudes and abilities
- a current practicing certificate.

The Act is silent as to nominees' employment. However, currently all DAMHS are employees of a mental health service. Nomination does not mean automatic appointment. If nominees do not meet the Director-General's expectations for the DAMHS role, they will not be appointed.

## 3.6 Performance review

Statutory officers are subject to performance reviews by their employing agencies. For DAMHSs, such reviews may involve the Director of Mental Health seeking feedback on the DAMHS's performance from the following:

- other DAMHSs
- people with lived experiences of mental health services
- Te Whatu Ora mental health service leadership team
- other office holders under the Act (such as district inspectors)
- any other relevant persons.

The Director will measure DAMHSs' performance against the appointment criteria set out above.

## 3.7 Suspension and removal, and resignation

### 3.7.1 Suspension and removal

Section 92(3) of the Act provides that the Director-General may at any time suspend or remove a DAMHS for any of the following proved to the satisfaction of the Director-General:

- failure to perform adequately the duties of the office
- neglect of duty
- misconduct
- inability to perform the duties of the office.

### 3.7.2 Resignation

Compulsory mental health treatment in any given area must operate effectively at all times. Therefore, when a DAMHS intends to resign they should inform the Director of Mental Health suitably in advance and help organise a transition for the DAMHS functions for their area of appointment.

# 4 Duly authorised officers

Duly authorised officers (DAOs) are health professionals designated and authorised by a DAMHS to perform the functions and exercise the powers conferred by the Act. A DAMHS cannot designate and authorise a health professional to be a DAO unless the DAMHS is satisfied that the person has undergone appropriate training and has appropriate competence in dealing with persons who are mentally disordered (section 93(2) of the Act). The Director of Mental Health recommends that DAMHSs appoint as DAOs health professionals who have experience responding to concerns about a person's mental health and contributing to the assessment and treatment of people with mental health problems.

A DAO must carry out their duties under the general direction of the DAMHS (section 93(4) of the Act).

Section 37 of the Act provides that, so far as practicable, DAOs must act as a ready point of contact for anyone in the community who has any worry or concern about any aspect of the Act or about services available for those who may be suffering from a mental disorder. At the request of anyone, DAOs must provide all such assistance, advice and reassurance as may be appropriate in the circumstances.

Section 93(1)(b) of the Act provides that a DAMHS must maintain an appropriate directory listing of DAOs' telephone numbers to be rung when information or assistance is required under the Act. This indicates that (in practice) DAOs will often be the first point of contact for members of the public seeking information or assistance when they are experiencing mental health difficulties or are concerned about someone else's mental health.

## 4.1 Skills

A DAO must demonstrate a variety of skills, including:

- the ability to provide practical assistance in dealing with persons who may be mentally disordered
- the ability to undertake a mental status examination
- clinical skills in:
  - engagement
  - interpersonal relationships
  - conflict resolution
  - problem solving
  - behaviour management
  - primary and secondary de-escalation

- crisis management
- good written and communication skills
- the ability to effectively consult and communicate with family and whānau
- the ability to work in a multidisciplinary team
- confidence in using principles of restraint minimisation such as those contained in the Safe Practice Effective Communication<sup>1</sup> programme
- the ability to liaise with community agencies and work with them in a cooperative manner, including iwi, marae committees, Pacific and church groups
- the ability to provide advice to the public concerning the operation of the Act and the services available for those who may be affected by mental disorder
- the ability to educate other agencies and the public on the Act
- the ability to make decisions and act independently
- the ability to use supervision, peer reviews and debriefing procedures for clinical matters and in the use of the Act
- the ability to work in cooperation with police
- the initiative to seek specific and specialist advice when appropriate.

## 4.2 Statutory functions

In exercising their duties, DAOs must carry suitable identification issued by the DAMHS under section 93(3) of the Act and carry out their duties under the general direction of the DAMHS (section 93(4) of the Act).

A DAO needs to understand the details of the compulsory assessment and treatment requirements of the Act so that they are able to answer specific questions. It is also important for DAOs to understand the powers of police if their assistance is requested, the scope of the Memorandum of Understanding between the Ministry of Health and Police (Ministry of Health 2021a) and any local agreements that apply.

A DAO should balance their responsibilities under section 5 of the Act (discussed above in section 1 of these guidelines) with the need to ensure that the overall goal of appropriate care for a person is not unnecessarily hindered.

As they are the lead official, DAOs must remain with the *patient* or *proposed patient* throughout the assessment process and ensure continued oversight and support to the *patient* until admission or discharge. This may include accompanying the police to an agreed place of assessment so that there is no significant time lapse while a *patient* is with the police.

<sup>1</sup> Safe Practice Effective Communication (SPEC) is a four-day, Te Whatu Ora district services based national training course supporting best and least restrictive practice in mental health inpatient units.

## 4.2.1 Section 122B: Use of force in exercising powers

Section 122B(1) of the Act provides that a DAO exercising certain powers may, if they are exercising the power in an emergency, use such force as is reasonably necessary in the circumstances. This applies if a DAO is exercising the power to:

- take a person for an examination (section 38(4)(d))
- take or return a *proposed patient* or *patient* to a place of assessment or treatment (section 40(2))
- return a special *patient* to hospital (sections 50(4), 51(3) and 53)
- if the DAO is a registered nurse, detain or take a person for an examination (section 111(2)).

Section 122B(3) provides that a person treating a *patient* to whom sections 58 or 59 of the Act applies may use such force as is reasonably necessary in the circumstances. This is different to section 122B(1), which applies where the DAO is exercising the relevant power in an emergency.

'Force' includes every touching of a person for the purposes of compelling or restricting movement or administering treatment. It will normally be appropriate for DAOs to use minimal force when exercising one of the powers above. 'Minimal force' means light or non-painful touching: for example, when guiding a person towards a building or room or helping a person into or out of a vehicle; this is not therefore defined as, or reportable as, force for the purposes of section 122B of the Act. The extent of reasonable force depends on the circumstances of the situation. In all situations the DAO should not use any more force than is reasonably necessary to safely exercise the relevant power. Use of force that is not authorised by law and is not reasonably necessary in the circumstances is a criminal offence.

The use of force should always be considered a last resort. A DAO should be able to demonstrate that they considered and attempted conflict resolution and de-escalation approaches before using force or any other method of coercion.

A DAO can request police assistance in certain circumstances (see section 4.2.10 below and the Memorandum of Understanding between the Ministry of Health and New Zealand Police (Ministry of Health 2021a)). A DAO should request assistance from police whenever it is necessary to use more than minimal force outside of a mental health unit to minimise the risk of harm to the DAO or to the person on which a power is exercised. A DAO should only consider police involvement when all other means have been exhausted.

A DAO must not enter premises if they do not have consent to enter. The DAO can call a member of the police to enter premises in certain circumstances (see section 4.2.10 below).

When a DAO uses force while exercising a power under the Act, they must complete a log recording the circumstances in which the force was used as soon as practicable and forward a copy to the DAMHS as soon as practicable (section 122B(4) of the Act).



Reporting the use of force must follow the health care provider's policies and event reporting processes. Depending on the circumstances, the DAMHS may wish to discuss the situation with the DAO.

A log for this purpose should include:

- the date, time and place that force was used
- why force was required, including details of de-escalation attempts
- what type of force was applied and by whom
- any injury to *patients* or staff members involved
- any action or follow-up required.

The requirement to log the use of force will normally be fulfilled through compliance with the service provider's adverse event notification system.

## 4.2.2 Powers to be exercised with respect for rights of *patients* and proposed *patients*

Part 6 of the Act sets out the specific rights of *patients* and *proposed patients*. A DAO should be familiar with these rights and aim to uphold them. The Mental Health Act guidelines provide further guidance on these rights.

Certain sections of the Act are particularly relevant to the initial assessment process that DAOs will often be involved in. Section 64 requires DAOs to provide certain general and specific information to *patients* and *proposed patients*, including information about their rights and their legal status as a *patient*. A DAO should inform *patients* of their right to independent psychiatric advice (section 69 of the Act) and legal advice (section 70 of the Act).

## 4.2.3 Section 37: Providing general advice or assistance

As mentioned above, section 37 of the Act provides that, so far as practicable, DAOs must act as a ready point of contact for anyone in the community who has any worry or concern about any aspect of the Act or about services available for those who may be suffering from mental disorder. At the request of anyone, DAOs must provide all such assistance, advice and reassurance as may be appropriate in the circumstances. In practice, this requires that DAOs have a good working knowledge of the Act and of the mental health services available in their area. A DAO must be readily contactable at all times.

## 4.2.4 Section 38: Providing assistance when a person may need assessment

Section 38(1) of the Act provides that anyone who has concerns that a person may be suffering from a mental disorder may at any time request the assistance of a DAO.

Section 38(2) describes the steps that a DAO must take when they receive such a request. A DAO must:

- investigate the matter to the extent necessary to be satisfied that:
  - the person making the request has genuine concerns
  - there are reasonable grounds for believing that the person to whom the request relates may be suffering from a mental disorder
- decide, on reasonable grounds, whether or not the person needs to have an examination urgently in the person's own interests or the interests of any other person.

There is a low threshold for establishing that a requester has 'genuine concerns' about a person. A DAO should normally continue to investigate whether or not there are reasonable grounds for believing that a person may be experiencing a mental disorder, unless the request is obviously malicious or false or is not related to the person's mental health.

In determining whether there are reasonable grounds for believing that a person may be experiencing a mental disorder, a DAO should make a clinical assessment by considering the following:

- why the person has requested a DAO's assistance
- any relevant prior history of mental illness
- any relevant available record of the person's health information
- the type and duration of the relationship between the person requesting assistance and the person who may be mentally disordered
- any recent contact the person may have had with a primary health care provider, the police or the local accident and emergency service.

If a DAO is satisfied that the person making the request has genuine concerns and there are reasonable grounds for believing that the person to whom the request relates may be suffering from a mental disorder, they must decide whether or not the person requires an urgent examination. The DAO must take into account the interests of the person or of any other person, and should also consider the following:

- whether the person is likely to comply with arrangements for an examination under section 8B
- any past records relating to the person, particularly relating to their contextual risk of violence or self-harm, non-attendance or poor self-care
- the resources required and available to safely transport the person.

If police assistance is required for transportation, the DAO must arrange for either themselves or a suitable mental health professional to accompany the person in addition to police unless there is an exceptional reason why this cannot occur.

The DAO who has received the request for assistance under section 38 **cannot complete a section 8B examination certificate**. The DAO who receives the request for assistance is an independent statutory official in the process, and has a statutory responsibility to:

- investigate whether the concern is genuine and there are reasonable grounds for believing that the person to whom the request relates may be suffering from a mental disorder
- decide, on reasonable grounds, whether or not the person needs to have an examination.

However, another mental health practitioner on the crisis team, could complete the section 8B examination, as long as they are **not undertaking the role and function of DAO for that person**. The DAO is the statutory officer responsible for arranging a section 8B examination by another suitable qualified mental health practitioner. Because a member of the crisis team is functioning as DAO with respect to this request, this does not preclude another appropriately qualified team member from completing the section 8B examination.

#### **a. Arranging non-urgent examinations**

If a DAO decides that a person needs to have an examination but not urgently, section 38(3) of the Act requires them to:

- arrange (or assist in arranging) a mental health practitioner to examine the person with a view to issuing a certificate under section 8B of the Act
- if a section 8B certificate is issued, assist someone else to make an application under section 8A of the Act for the assessment of the person, or make the application themselves if nobody else is willing. Appropriate applicants may include the mental health practitioner who issued the section 8B certificate, or the person who requested assistance
- arrange for an assessment examination to be conducted under section 9 of the Act.

#### **b. Arranging urgent examinations**

If a DAO decides that a person needs to have an examination urgently, section 38(4) of the Act requires them to:

- arrange for an examination under section 8B of the Act to take place
- if a certificate is issued under section 8B, assist someone else to apply under section 8A of the Act for assessment of the person, or apply themselves if nobody else is willing to apply
- arrange for an assessment examination to be conducted under section 9 of the Act.

In arranging for an examination under section 8B of the Act to take place, the DAO must first try to get a mental health practitioner to come to the person to examine them with a view to issuing a certificate under section 8B of the Act and take all reasonable steps to ensure that the mental health practitioner is able to examine the person (section 38(4)(a) and (b)). This may include requesting police assistance under section 41 of the Act, although a DAO is permitted to use force to ensure that the mental health practitioner is able to examine the person (section 122B(2)(a)).

However, if a mental health practitioner is not available and the person refuses to go willingly to a mental health practitioner, then a DAO must take all reasonable steps to take the person to a mental health practitioner and ensure that the mental health practitioner is able to examine the person (section 38(4)(c) and (d)). This may include

requesting police assistance under section 41 of the Act, although a DAO is permitted to use force to take the person to the mental health practitioner (section 122B(2)(a)). A DAO should use only minimal force in exercising these powers, in accordance with section 4.2.1 above. If more than minimal force is required, a DAO should request assistance from police (see 4.2.10 below).

It is important to note that section 6A of the Act enables the use of AVL technology for *patient* assessments and examinations when the physical presence of a *patient* is not practicable and AVL is appropriate in the circumstances.

Under section 6A, the use of AVL is permitted if a clinician, mental health practitioner or psychiatrist (a practitioner) exercises a power under the Act that requires access to a person or if a judge, any person directed by a judge, or a member of a review tribunal is required to examine a person under the Act.

In relation to the exercise of a power in respect of a person under the Act, 'AVL' means facilities that enable both audio and visual communication with the person. Section 6A(5) states that, to avoid doubt, 'an examination may not be carried out under this section by audio link'.

Face-to-face assessments are the preferred method of examination; the use of AVL should not become the default method of assessment and examinations under the Mental Health Act. Practitioners should not use AVL technology to ease pressure on services when staff resources are limited.

### **c. Responding to requests from police – intoxicated *patients***

Police may ask a DAO to arrange an assessment under section 38 or section 109 of the Act for a person who appears to be mentally disordered but is also intoxicated by alcohol or drugs.

In situations where a person may be both mentally disordered and intoxicated, a DAO or crisis staff member should attend when requested, and then may advise that a comprehensive assessment of the individual cannot be undertaken because of their degree of intoxication.

In such instances, the DAO or crisis staff member should advise police on whether it seems likely that the person will need to be assessed once they are less intoxicated and discuss how and where to manage that person until an appropriate comprehensive assessment can be undertaken.

Section 36 of the Policing Act 2008 ('Care and protection of intoxicated people') cannot be used for the purpose of extending the maximum time of detention for an assessment under the Mental Health Act.

Mental health services should attend within one hour of being requested by police. (Police and the local mental health service may agree on local variations to this timeframe, particularly for isolated communities).

The maximum period of detention for assessment under the Mental Health Act is six hours.

The maximum period of detention for assessment under section 36 of the Policing Act 2008 is initially 12 hours and then, if still intoxicated, the person may be held for a further 12 hours (Ministry of Health 2021a).

If after investigating the matter a DAO does not believe that a detained person is mentally disordered, they should give advice to the member of the police who called them about the detained person's care and general information about any alternative services that may be available.

## 4.2.5 Determination of detention pursuant to section 23(1) of the New Zealand Bill of Rights Act 1990

Any person who is 'detained' for the purposes of assessment under section 38 of the Mental Health Act shall be advised of their rights pursuant to section 23(1) of the New Zealand Bill of Rights Act 1990. If the person is urgently detained under section 38, then the DAO should inform the person of:

- the reason for their detention at the time they are detained
- their right to consult a lawyer without delay
- the right to have the validity of their detention determined without delay by way of *habeas corpus*<sup>2</sup> and to be released if the detention is not lawful.

In practice, this will require talking with the detained person then providing a written statement of their rights. Normally a written statement of the *patient's* rights must be given to them under section 64(1) of the Act; this should include the *patient's* rights under the NZBORA.

## 4.2.6 Section 8A: Making an application for assessment

Except as required under section 38 (described above in section 4.2.4), a DAO is not required to make an application for assessment under section 8A. However, a DAO may make an application for assessment under section 8A following the completion of a section 8B certificate by a health practitioner and may, in many cases, be the most appropriate person to make such an application.

## 4.2.7 Section 9: Arranging an assessment examination

Section 9 of the Act states that an application is made under section 8A when the DAMHS or DAO receives a filled-out application form that is accompanied by a certificate issued under section 8B. The section 8B certificate states the date of the examination, which must be within the three days prior to the date of the 8A

<sup>2</sup> Habeas Corpus, is a legal writ for a person's release from unlawful detention

application. In practice a DAO will normally be the person who arranges an assessment examination after receiving a request for assistance when a person may need assessment under the provisions of section 38 of the Act.

The following paragraphs assume that it is the DAO that arranges the assessment examination.

**a. Nominating a person to conduct the assessment examination**

The DAO must nominate a person to conduct the examination (section 9(2)(a) of the Act). Under section 9(3), that person must be a mental health practitioner who is:

- a psychiatrist approved by the DAMHS for the purposes of the assessment examination, or of assessment examinations generally
- if no psychiatrist is 'reasonably available' (see definition in 3.4.2), a medical practitioner or nurse practitioner (not being a medical practitioner or nurse practitioner who issued the certificate under section 8B) who, in the opinion of the Director of Mental Health, is suitably qualified to conduct the assessment examination or assessment examinations generally, may conduct the examination.

After nominating the person to conduct the examination, the DAO must determine, in consultation with that person, the time and place at which the examination is to be conducted (section 9(2)(b) of the Act).

**b. Giving written notice to the proposed patient**

The DAO must then give the *proposed patient* written notice:

- requiring the *proposed patient* to attend at the specified place and time for the purposes of the assessment examination
- explaining the assessment examination
- stating the name of the person who is to conduct the assessment examination (section 9(2)(c) of the Act).

The section 9 notice to attend an assessment examination form is available on the Ministry website along with all other Mental Health Act statutory forms.

*Proposed patients* (people for whom an application under section 8A has been made) must receive a written statement outlining their rights under Part 6 of the Act. While section 64(1) requires this to be given to every person on becoming a *patient*, as the rights of *proposed patients* are mostly the same as those of *patients*, the Ministry recommends that the statement of rights required by section 64(1) be provided when the notice to attend an assessment examination is provided. When a *proposed patient* becomes a *patient*, they should be notified of the additional rights which only apply to *patients* (such as the rights concerning sending and receiving mail and some other rights specific to certain parts of the assessment and treatment process) (section 63A of the Act). A DAO should give this information in writing to the *patient* (see Ministry of Health 2021b)).

Any situation where a *patient* does not receive written notice under s9(2)(c) must be fully documented including the reason why. The DAO should keep a copy of the form that they attempted to give to the *patient* and file it in the *patient's* clinical record.

**c. Explanation of assessment examination must occur in presence of family or whānau, caregiver or independent person**

The DAO must ensure that they explain the purpose of the assessment examination and the requirements of the notice to the *proposed patient* in the presence of their family or whānau, caregiver or 'other person concerned with the welfare of the proposed *patient*' (section 9(2)(d) of the Act). This is mandatory, and non-compliance has previously led to judicial invalidation of the assessment process (*habeas corpus*). This requirement reflects the possibility that a person may lose their liberty following the assessment examination. The assessment and treatment process must be explained in advance, and the person should be given at least a brief time to discuss the assessment examination with their support person and prepare for the assessment examination.

A family or whānau member, caregiver or other person concerned with the welfare of the *proposed patient* may be present by AVL if the DAMHS or DAO is satisfied that their physical presence is not reasonably practicable. If full AVL technology is not available in the circumstances, a teleconference is permissible in this situation only. Care must be taken to ensure that all parties can adequately participate in the interaction, and that all parties have understood the information provided.

If a family or whānau member or caregiver is not available, an independent person concerned with the welfare of vulnerable people and with some understanding of compulsory mental health care should be engaged. The arrangements for this process vary across services; they include maintaining lists of suitable volunteers, relationships with lawyers on the Police Detention Legal Assistance Lawyers list., relationships with local kaumātua or Māori wardens, and agreements with local Justice of the Peace Associations.

A DAO should consider asking *proposed patients* who identify as Māori whether they would like an independent Māori support person, and should record the presence (or absence) of such a person on the *patient* file in every case.

When a person is in significant distress or is otherwise non-compliant with a DAO's attempt to provide a section 9(2)(d) explanation, the DAO should take a therapeutic approach to organising the assessment so that *patient* welfare is prioritised over strict legal compliance. If a person adamantly refuses to have anyone else present during the explanation, a court is unlikely to find that the assessment process is invalidated as a result.

During this process, interpreters should be provided if the *proposed patient's* first language is not English, as required under section 6 of the Act and to satisfy the requirement to deliver services with proper respect for a person's language under section 5(2)(c) of the Act. See section 1 of these guidelines for more information about the requirements for an interpreter to be provided.

## 4.2.8 Section 39: Assisting with *outpatients* and *inpatients on leave*

Section 39 of the Act provides that anyone may at any time request the advice or assistance of a DAO in relation to any aspect of the care, treatment or conduct of the following type of *patients*:

- every *patient* who is subject to an assessment otherwise than in a hospital
- every *patient* who is subject to a community treatment order
- every *patient* who is subject to an inpatient order but is on leave from the hospital in accordance with section 31 of the Act.

When the DAO receives such a request, they must:

- investigate the matter to the extent necessary to be satisfied that the concern of the person making the request is valid and that there are reasonable grounds for believing that further consideration of the *patient's* circumstances may be desirable
- inform the responsible clinician or any other appropriate person of the grounds of concern that have arisen in the case
- give such other advice or assistance in the matter as may be appropriate. For example, if the *patient's* state of health has deteriorated outside of hospital, it may be appropriate to suggest that the *patient* return to hospital for a period of inpatient treatment (section 39(3) of the Act).

## 4.2.9 Section 40: Taking or returning a *patient* to place of assessment or treatment

Under section 40 of the Act, a DAO may take all reasonable steps to take a *patient* or *proposed patient* to a place they are required to attend for assessment or treatment. To ensure DAO safety and the safety of the *patient* or *proposed patient*, reasonable steps should not normally include more than minimal use of force (see section 4.2.1 above), and the DAO should not enter premises without consent.

A DAO may request police assistance under section 41; for example, if entry to premises is necessary and the occupier of the premises has not consented to entry (see section 4.2.10 below). A DAO must take reasonable steps to ensure that the exercise of the power under section 40 is safe and to reduce the need to use force.

The section applies to:

- every *patient* or *proposed patient* who is required to attend, but refusing to attend, the following:
  - an assessment examination under section 9 of the Act
  - an assessment to which a notice is given under sections 11 or 13 of the Act
  - an examination by a judge under section 18 of the Act, if required by a notice under section 14(3)(b) of the Act



- a court hearing of the application for the compulsory treatment order under section 19 of the Act, if required by a notice under section 14(3)(c) of the Act
- a clinical review under section 76 of the Act
- every *patient* who is subject to a community treatment order and who is refusing to attend at a place for treatment in accordance with the order
- every *patient* who is subject to an inpatient order and is absent without leave or whose leave of absence has expired or been cancelled.

#### 4.2.10 Returning *patients* absent without leave

Various provisions under the Act allow DAOs to return *patients* absent without leave.

- Section 40(2)(b) of the Act: A DAO may take all reasonable steps to return a *patient* who is subject to an inpatient order and is absent from hospital without leave or when the *patient's* leave has expired or has been cancelled
- Section 50(4) of the Act: When the Minister of Health has cancelled special *patient* leave under section 50(3), the *patient* may be taken to the specified hospital by a DAO
- Section 51(3): When the DAMHS has directed a temporary return to hospital under section 51(1), the *patient* may be taken to the specified hospital by a DAO
- Section 53: A DAO may also retake a special *patient* who escapes, breaches a condition of leave or has failed to return on the expiry or cancellation of any period of leave to the hospital from which they escaped or were on leave or any other hospital specified by the Director.

If it is necessary to use more than minimal force to return a *patient* absent without leave (see section 4.2.1 above), or if entry onto premises is required, a DAO should request assistance from police (see section 4.2.10 below).

#### 4.2.11 Section 41: Requesting assistance from police

A DAO who is intending or attempting to do anything specified in section 38(4)(b) or (d) (where the DAO considers the *patient* requires an urgent examination) or section 40(2) (taking or returning a *patient* to a place of assessment or treatment) may call the police to assist them (section 41(1) of the Act).

Police called to assist a DAO under section 41(1) of the Act may enter the premises where the person is (section 41(2) of the Act). If it is reasonably practicable to do so, police must obtain a warrant under section 113A(7) before entering onto the premises (section 41(7) of the Act).

Police can use the necessary force to take or detain a person for any of these purposes. Detention may only occur for the shorter of six hours or (as applicable) the time taken to conduct the examination or conduct whichever of the processes listed in section 41(5)(b)(ii) of the Act that the *patient* was refusing to attend.

When a DAO requests police assistance, the DAO is the lead official dealing with the incident and as such retains responsibility for making subsequent decisions about the

person's assessment and treatment. The DAO should come to an agreement with police about the most suitable place to detain a person for an examination under sections 38(4)(b) or (d) or any of the other purposes set out in section 40(2). Unless the person presents a high risk of violence or is under arrest, the place of detention should normally be a hospital mental health unit.

The appropriate use of force in carrying out a power under the Act is explained in section 4.2.1 above.

## 4.2.12 Advice and assistance to mental health practitioner in emergency

A mental health practitioner must make every reasonable effort to get the advice and assistance of a DAO when emergency measures are considered; that is, when:

- a mental health practitioner considers that an urgent examination of a person under section 8B is necessary (section 110)
- a mental health practitioner who issued a certificate under section 8B has reasonable grounds for believing that sedation of a person is urgently required (section 110A)
- an urgent application for assessment has been made under section 110(2)(b) and a mental health practitioner has been nominated to urgently assess the *proposed patient* (section 110B).

When a mental health practitioner administers a sedative drug under section 110A, they must record the circumstances in which the drug was administered and give a copy to the DAMHS as soon as practicable. Ideally, such a record should be made available to the mental health practitioner conducting the assessment examination for the purpose of section 9 of the Act. This may mean that a DAO should ensure that a copy of the record is transported with the *proposed patient*. A DAO should also consider the appropriate steps to be taken to ensure the safe transport of a sedated *proposed patient*. This may include the use of paramedics and an ambulance.

Mental health practitioners and medical practitioners (as applicable) may call for police assistance under section 110C when exercising their powers under sections 110, 110A or 110B of the Act. A DAO consulted for advice under those sections may be best placed to determine whether police assistance is necessary. Section 110C of the Act sets out the powers of police when urgent assistance is required by a mental health practitioner.

## 4.2.13 Section 111: A nurse's power to detain

Section 111(2)(a) of the Act allows a registered nurse to detain, for the purpose of an examination, a person who has been admitted to hospital or who has been brought to a hospital (not being a *patient* who is already subject to assessment or treatment under the Act) who is acting in a manner that gives rise to a reasonable belief that they may be mentally disordered, and the nurse considers that:

- there are reasonable grounds for believing that the person may be mentally disordered

- it may be desirable for the person to have an assessment examination urgently in the person's own interests or the interests of any other person.

When a nurse detains a person under section 111 of the Act, the usual assessment process must continue. That is, the nurse must also, as soon as practicable, arrange for a mental health practitioner to examine the *patient* with a view to issuing a section 8B certificate, which will then require a section 8A application. This process must involve contacting a DAO. Note that if a section 8B certificate is not issued, the section 111 power to detain ceases.

A person cannot be detained under section 111 of the Act for more than six hours from the time the nurse first calls for a mental health practitioner to examine the person (section 111(3)). In line with good practice, there should be no delay. The call to a mental health practitioner should be made promptly once the nurse becomes aware of the need for assessment. It should be noted that the power to detain is not limited to the premises of a psychiatric unit and should be exercised with discretion, according to good clinical practice.

Many DAOs will also be registered nurses, and so may exercise this power in appropriate cases. Section 111 may be relevant to a DAO who is a registered nurse if a voluntary inpatient seeks to leave a psychiatric unit at a time when no mental health practitioner is available to assess them and the DAO has reasonable grounds for believing that the person may be mentally disordered.

## 4.3 Appointment process

The process of appointing DAOs to the area covered by a DAMHS must consider the skills, knowledge and attitude of candidates as described in section 2.3 of these guidelines. The following factors are essential and will be considered at the discretion of the DAMHS:

- demonstrated knowledge of mental health services in Aotearoa New Zealand
- demonstrated ability to develop key relationships
- references from at least two mental health specialists, preferably where one is a DAMHS
- demonstrated experience as a senior staff member with sufficient clinical knowledge
- demonstrated experience in responding to people with mental health problems or concerns
- demonstrated experience specialising in mental health treatment (for example, as a registered nurse).

The DAMHS will also consider:

- length of time a nominee has resided in Aotearoa New Zealand
- potential conflicts of interest

A DAO selection process must accommodate the requirements of these guidelines and the Act and include the participation of both employers and DAMHS. There will be some situations that will not easily fit this process, such as when a DAO is not an employee of

a mental health service but is an employee of another service provider. Every effort should be made by the employer to ensure that adequate training is provided to DAOs. DAMHS should be actively involved in this process.

When staff are being interviewed for positions that currently involve DAO duties, the DAMHS or their delegate must be involved. The DAMHS and the employer should agree on the interview process to be used. This will enable a structure that evaluates competence for potential DAO appointments and meets the needs of both the employer and the DAMHS. Local arrangements will need to be negotiated to find the most effective and efficient interview processes.

The Ministry recommends that potential candidates for appointment as DAOs are identified, trained and assessed as part of a structured appointment process. Training should ensure that candidates are able to competently apply the Act by way of case studies, clinical scenarios and mentoring. A formal assessment addressing the appointment criteria should follow this training.

The DAMHS has responsibility for ensuring that DAOs in their area have the appropriate training and competence to provide general advice and assistance.

## 4.4 Employers' obligations

The extensive and demanding tasks that DAOs carry out are only possible with the active support of their employers and the DAMHSs to whom DAOs are accountable. In this context, the main responsibility of employers is to ensure that they employ only competent staff as DAOs.

Employers and DAMHSs share a responsibility to support DAOs in other ways. These include providing:

- training, both initial and ongoing, as well as performance monitoring
- sufficient resources (such as transport, communications equipment, office space and administrative support) for DAOs to carry out their responsibilities
- access to regular skilled supervision and advice, as well as support and debriefing following serious incidents
- access to suitable crisis/acute services
- access to psychiatrists and other mental health practitioners for certifications, after-hours support and advice
- a local memorandum of understanding with police
- indemnity cover to provide protection to staff from legal challenge while carrying out their duties under the Act
- access to legal opinions and copies of relevant statutes
- whenever possible, sufficient staff to provide a 24-hour service and ensure that DAOs have the support they need. As far as possible, a range of staff should be available to allow matching of the cultural/ethnic background of the consumer with that of the DAO.

# 5 Responsible clinicians

Section 2(1) of the Act defines a 'responsible clinician' as, in relation to a *patient*, the clinician in charge of the treatment of that *patient*.

Section 7 of the Act states that:

*For the purposes of this Act, the Director of Area Mental Health Services shall ensure that at all times there is assigned in respect of each patient a responsible clinician who shall be—*

- (a) a psychiatrist approved by the Director of Area Mental Health Services; or*
- (b) some other registered health professional who, in the opinion of the Director of Area Mental Health Services, has undergone training in, and is competent in, the assessment, treatment, and care, of persons with mental disorder.*

Note that, in the situation of an assessment examination of *patients* under the age of 17 years, wherever practicable, the examination must be conducted by a psychiatrist practising in the field of child psychiatry (section 86 of the Act).

Before a DAMHS appoints a psychiatrist or other registered health professional as a responsible clinician, they will need to assure themselves that the person has the necessary competencies to fulfil the role. The role of the responsible clinician is potentially different with each *patient* and at different stages of the assessment and treatment process. The DAMHS will need to ensure the matching of *patient* needs to responsible clinician skills and experience at each particular phase of the assessment and treatment process. The DAMHS may therefore assign some clinicians to act as responsible clinicians with any *patient* at any stage of assessment and treatment, others to act as responsible clinicians for any *patient* at specific stages of treatment (for instance, when a *patient* has been placed on a community treatment order), and others to act for specific *patients* or *patient* types at specific stages of treatment. In practice, the DAMHS will often ensure that each *patient* is assigned a responsible clinician by ensuring that there are robust allocation procedures in place in each of the mental health services that they oversee.

## 5.1 Role of responsible clinician

Although the Act states that the responsible clinician is the clinician in charge of the treatment of a *patient*, it does not define 'treatment'. The Ministry interprets 'treatment' to mean the use of all proposed therapeutic interventions, not limited to medications. The role of a responsible clinician can be varied at different phases of the assessment and treatment process.

Clinical care includes the processes of assessment and treatment and usually requires the oversight and coordination of the work of a variety of health professionals in a multidisciplinary team. People subject to compulsory processes under the Act have a number of rights, defined in Part 6 of the Act. The responsible clinician needs to have a sound knowledge of these rights.

To manage *patients* during the assessment phase, the responsible clinician needs to objectively assess whether, in their opinion, a *patient* under their care meets the criteria for a compulsory treatment order.

In the initial assessment phase, it is the role of the responsible clinician (if they are the assessing psychiatrist, medical practitioner or nurse practitioner) to determine whether the *patient/proposed patient* is mentally disordered. Often, the use of the Mental Health Act is discontinued before the stage is reached at which a compulsory treatment order is sought. However, if the responsible clinician re-assesses the *patient* and still considers there are reasonable grounds to believe the person has a mental disorder, the responsible clinician will need to present an application to the court.

To manage *patients* on compulsory treatment orders, the responsible clinician must be able to determine whether the *patient* still meets the criteria for remaining on a compulsory treatment order.

Once satisfied that someone is in need of treatment, the responsible clinician needs to determine the nature of the treatment, oversee the implementation of the treatment process and continually review progress.

People with a mental disorder, as defined by the Act, will commonly have symptoms indicative of psychiatric illness or of significant psychological disorder. On occasion a person may present with signs of mental disorder related to physical health problems, which could lead to an initial Mental Health Act assessment, until a potential mental disorder is investigated further and ruled out. The responsible clinician determines necessary procedures to clarify diagnostic matters and to provide necessary interventions to treat and to address causes of disorder.

At each stage of the assessment process, the responsible clinician will inform the DAMHS of the findings of each assessment by providing certificates of assessment (sections 10(2), 12(2) and 14(2) of the Act). Where a *patient* is subject to a compulsory treatment order, responsible clinicians must provide the DAMHS with periodic certificates of clinical review (section 76(4) of the Act), and the Mental Health Review Tribunal must also provide certificates where it has undertaken a review (section 79(10)(b) of the Act).

## 5.2 Legislative requirements of the Act that concern responsible clinicians

A detailed list of the tasks required by the Act is set out at section 5.4 below. These can be summarised into the following categories:

- clinical assessment
- supervisory oversight
- administration of the requirements of the Act
- communication and consultation
- treatment.

In addition, skills and knowledge regarding the cultural context of *patients*, the legal requirements of the Act and the ability to function as an expert witness are necessary. Where a *patient* subject to the provisions of the Act dies, a responsible clinician must report the death immediately to a constable and also to the Director of Mental Health within 14 days under section 132 of the Act (see 4.2.2 above for further detail). In practice, responsible clinicians will notify the DAMHS immediately if a *patient* under their care dies. Note that all deaths of *patients* who are subject to the Mental Health Act are reportable deaths as set out in section 14(2)(e) of the Coroners Act 2006.

## 5.3 Competencies of responsible clinicians

Responsible clinicians are typically senior mental health clinicians and must be either a psychiatrist or a registered health professional (such as a psychologist, nurse or nurse practitioner) who, in the opinion of the DAMHS, has undergone training and is competent in the assessment, treatment and care of people experiencing a mental disorder.

The initial comprehensive assessment and diagnostic and treatment processes include consideration of the range of factors that impact upon health status, including physical health problems. These require careful attention from a health practitioner.

Responsible clinicians need to have a sophisticated understanding of the interplay of human rights and the need to meet the therapeutic needs of *patients*. As the person charged with overseeing the *patient's* treatment, a responsible clinician has a particular responsibility to ensure:

- that the *patient's* rights are upheld (Part 6 of the Act)
- that there is recognition and proper respect for the person's cultural and ethnic identity, language and religious or ethical beliefs (section 5 of the Act)
- consultation with the *patient's* family or whānau (section 7A of the Act).

Under section 9(3)(a), the health practitioner conducting an assessment must be a psychiatrist approved by the DAMHS for the purposes of the assessment examination, or of assessment examinations generally. If no psychiatrist is reasonably available, under section 9(3), the responsible clinician can be a medical practitioner or nurse practitioner (not being a medical practitioner or nurse practitioner who issued the certificate under section 8B(4)(b)) who, in the opinion of the Director of Mental Health, is suitably qualified to conduct the assessment examination.

Where further assessment and treatment is required under the Act, other registered health professionals may, in the opinion of the DAMHS, have the requisite competencies to act as responsible clinicians for particular *patients*.

The broad categories of skills required must be combined with appropriate personal attributes and attitudes.

**a. Clinical assessment skills**

- ability to conduct comprehensive clinical assessments, paying attention to biological, psychological and sociological factors and integrating information gained by direct assessment as well as that provided by other informants/assessors
- ability to conduct a comprehensive assessment of risk
- ability to develop appropriate management plans, paying due cognisance to risks
- an understanding of interventions for treatment of mental disorders, including pharmacological treatment
- an understanding of the locally available resources for the management of mental disorders
- ability to assess competence
- ability to assess disability
- ability to practise with sensitivity to cultural factors that impact on health
- clinical skills in engagement, conflict resolution, problem solving, behaviour management, primary and secondary de-escalation and crisis management, and interpersonal skills

**b. Supervisory skills**

- ability to work collaboratively with and provide oversight and direction for the practice of other members of the multidisciplinary team caring for the responsible clinician's *patients*
- an awareness of their own skills and limitations, to the extent that they are able to appropriately request and use clinical second opinions from other suitable clinicians

**c. Administrative skills**

- ability to make decisions and act independently
- ability to schedule statutory reviews of *patients* (or oversee systems for this purpose)
- ability to arrange processes to coordinate review of multidisciplinary care
- ability to ensure copies of documents are sent according to the requirements of the Act



- ability to direct the manner in which *patients'* mail is handled

**d. Communication and consultation skills**

- ability to effectively consult and communicate with *patients*, family, whānau, other staff and statutory officials in a wide variety of contexts
- ability to work constructively with interpreters and cultural facilitators to improve communication where appropriate
- ability to communicate assessments and management plans and their legal implications to *patients*
- ability to write succinct reports demonstrating the presence of mental disorder and the need for compulsory treatment where appropriate for presentation to courts and review tribunals
- ability to explain matters to people in a variety of capacities (*patients*, caregivers, lawyers, courts, district inspectors, review tribunals and clinical colleagues) in terms relevant to their interest and involvement. This includes the ability to appropriately organise and transfer care to another responsible clinician
- ability to seek views of family or whānau in the process of assessment, and to incorporate these views into decisions, pursuant to section 7A of the Act
- ability to consult with, involve and inform family or whānau in the process of assessment and treatment when making decisions about applying for and continuing compulsory treatment orders
- ability to respond to complaints and appear before inquiries in a professional and dispassionate manner.

## 5.4 Appointment process

The appointment of responsible clinicians must consider the skills, knowledge and attitude of candidates as described in section 2.3 of these guidelines. The following factors are essential and will be considered at the discretion of the DAMHS:

- demonstrated knowledge of mental health service in Aotearoa New Zealand
- demonstrated ability to develop key relationships
- references from at least two mental health specialists, preferably where one is a DAMHS
- demonstrated experience in clinical case management.

The DAMHS will also consider:

- length of time a nominee has resided in Aotearoa New Zealand
- potential conflicts of interest

Under section 7 of the Act, DAMHSs are responsible for approving suitable registered health professionals to act as responsible clinicians, and for ensuring that each *patient* subject to the provisions of the Mental Health Act is assigned a responsible clinician. The assigning of a responsible clinician should reflect the competencies of the clinician detailed in section 5.2 above and the nature of the mental disorder a *patient* is thought to have.

## 5.5 Requirements of the Act for responsible clinicians

The following table sets out what the Mental Health Act requires of responsible clinicians as well as implied actions.

| Mental Health Act provision | Tasks required by Act ( <i>and implied actions</i> )  |
|-----------------------------|---|
| Section 5                   | Exercise of powers with proper respect to cultural and ethnic identity, language and religious or ethical beliefs, and with proper recognition of the importance and significance to the person of the person's ties with their whānau and family groups and the contribution those ties make to the person's wellbeing.  |
| Section 6                   | Provision of an interpreter in respect of any <i>patient</i> for whom the first or preferred language is any language other than English (including Māori and New Zealand Sign Language), or who is unable to understand English because of physical disability. Responsible clinicians must ensure, as far as reasonably practicable, that the interpreter provided is competent.  |
| Section 7A                  | <ul style="list-style-type: none"> <li>• When providing an assessment of, or treatment to, a <i>proposed patient</i> or <i>patient</i>, the responsible clinician <b>must</b> consult with the family or whānau of the <i>proposed patient</i> or <i>patient</i>, unless there are reasonable grounds to consider that such consultation is not in the best interests of the <i>patient</i> or <i>proposed patient</i> or is not reasonably practicable (in accord with the guidelines developed to assist with this purpose). In deciding whether such consultation is in the best interests of a <i>proposed patient</i> or <i>patient</i>, the responsible clinician must consult the <i>proposed patient</i> or <i>patient</i>.</li> <li>• Consultation with family or whānau is an ongoing process. Although the Act requires consultation at certain times, it should occur through all phases and stages of the assessment or treatment process. The Ministry recommends that a health practitioner or responsible clinician consults or attempts to consult:               <ul style="list-style-type: none"> <li>– when making significant treatment decisions</li> <li>– at each stage in the compulsory assessment and treatment process</li> <li>– when considering discharge from the compulsory assessment and treatment process</li> <li>– when developing a recovery plan.</li> </ul> </li> </ul> |
| Section 11                  | <ul style="list-style-type: none"> <li>• Consideration of whether an outpatient or inpatient can continue to be assessed and treated adequately as an outpatient or inpatient respectfully.</li> <li>• Direction (by written notice) of change in inpatient or outpatient assessment and treatment, in accord with the clinical state of the <i>patient</i> and any associated requirements.</li> <li>• Consideration of fitness for release from compulsory status (<i>and determination of suitable alternatives for ongoing voluntary care</i>).</li> <li>• Provision of necessary notices to the person in charge of the hospital.</li> </ul>   |
| Section 12                  | <ul style="list-style-type: none"> <li>• Recording of findings (before the expiry of the five-day assessment) in certificate of further assessment and clinical report stating the responsible clinician's opinion of whether the <i>patient</i> is mentally disordered or there remain reasonable grounds for believing that the <i>patient</i> is mentally</li> </ul>   |

| Mental Health Act provision | Tasks required by Act ( <i>and implied actions</i> )   |
|-----------------------------|--|
|                             | <p>disordered and that it is desirable that the <i>patient</i> be required to undergo further assessment and treatment.</p> <ul style="list-style-type: none"> <li>• Sending the certificate of further assessment, the responsible clinician's reasoning and any notice given to the <i>patient</i> under section 13(1) to the DAMHS.</li> <li>• Where the responsible clinician is of the opinion the <i>patient</i> is not mentally disordered, directing release of the <i>patient</i> from compulsory status.</li> <li>• Where the responsible clinician is of the opinion that there remain reasonable grounds for believing that the <i>patient</i> is mentally disordered and that it is desirable that the <i>patient</i> be required to undergo further assessment and treatment, providing notice to the <i>patient</i> of requirement to attend for further 14 days (section 13).</li> <li>• Forwarding copies of the responsible clinician's finding (set out in the certificate) to identified parties (set out in section 12(5)).</li> <li>• Giving or sending a statement of the legal consequences of the finding, and of the recipient's right to apply for review, to identified parties (set out in section 12(6)).</li> </ul> |
| Section 13                  | <ul style="list-style-type: none"> <li>• Nominating an appropriate place for further assessment and treatment during the 14-day period specified for this purpose, and provision of a notice to that effect.</li> <li>• Other tasks as set out in section 11.</li> </ul>   |
| Section 16                  | <ul style="list-style-type: none"> <li>• Being available to a judge for consultation in regard to the <i>patient's</i> condition (<i>and participating fully in hearing</i>).</li> <li>• Providing comment to the judge in regard to the condition of the <i>patient</i>. (<i>Such comment should include comments in regard to the features of mental disorder, the availability of and need for treatment, the venue for treatment and the consequences of not providing treatment.</i>)</li> <li>• Being available to speak with a <i>patient's</i> legal representative through both the section 16 and compulsory treatment order process.</li> </ul>   |
| Section 18                  | <ul style="list-style-type: none"> <li>• Being available to the judge for consultation in regard to the <i>patient's</i> condition (<i>and participating fully in hearing</i>).</li> <li>• <i>Providing comment to the judge in regard to the condition of the patient. (Such comment should include comments in regard to the features of mental disorder, the availability of and need for treatment, the venue for treatment and the consequences of not providing treatment.)</i></li> </ul>   |
| Sections 19–23              | <ul style="list-style-type: none"> <li>• There are no specific references to the tasks of the responsible clinician in these sections.</li> <li>• <i>Key responsibilities relate to participation in the hearing process, listening to evidence, and responding to questions from the judge and other parties.</i></li> </ul>  |
| Section 25                  | <ul style="list-style-type: none"> <li>• Respecting the restriction on the publication of reports of the hearings.</li> </ul>  |
| Section 28                  | <ul style="list-style-type: none"> <li>• Providing evidence in regard to the treatment required by the <i>patient</i>, their social circumstances and the services available to provide treatment, and the adequacy of these services for the <i>patient</i> in light of their social proceedings under the Act.</li> </ul>  |
| Section 29                  | <ul style="list-style-type: none"> <li>• <i>Defining the terms and conditions of the treatment order.</i></li> <li>• Ongoing review of the adequacy of community treatment, with redefinition of the terms of the treatment order if required. If the responsible clinician considers the <i>patient</i> cannot continue to be treated adequately as an outpatient, they should direct that the <i>patient</i> be</li> </ul>   |

| Mental Health Act provision | Tasks required by Act ( <i>and implied actions</i> )   |
|-----------------------------|--|
|                             | <p>admitted to be treated as an <i>inpatient</i> for a period of up to 14 days, or be assessed in accordance with sections 13 and 14.</p> <ul style="list-style-type: none"> <li>Forwarding of copies of such a direction to identified parties (set out in section 29(6)).</li> </ul>   |
| Section 30                  | <ul style="list-style-type: none"> <li>Ongoing review of the need for inpatient treatment, <i>with redefinition of the terms of the treatment order if required</i>. Consideration must be given to the <i>patient's</i> fitness to drive and withholding of driving license (Land Transport Act 1998).</li> <li>If the responsible clinician considers that the inpatient can be treated adequately as an outpatient, directing that the <i>patient</i> be discharged from hospital and directing of the <i>patient</i> to attend the nominated place for treatment</li> </ul>  |
| Section 31                  | <ul style="list-style-type: none"> <li>Considering the suitability of the <i>patient</i> to have a period of leave not exceeding three months.</li> <li>Determining appropriate terms and conditions of leave.</li> <li>Determining whether leave should be cancelled and issuing of notice in writing to the <i>patient</i> if cancelled.</li> <li>Further consideration of the <i>patient's</i> fitness to drive and withholding of driving licence (Land Transport Act 1998).</li> </ul>  |
| Section 34                  | <ul style="list-style-type: none"> <li><i>Review of the patient, reassessing their clinical condition and their fitness for release from compulsory status.</i></li> <li>Within 14 days of the expiry of the compulsory treatment order, causing the case to be reviewed under section 76 of the Act.</li> <li>If, following that review, the responsible clinician is satisfied that the <i>patient</i> is not fit to be released from compulsory status, applying to the court for an extension of the order for a further period of six months.</li> </ul>  |
| Section 35                  | <ul style="list-style-type: none"> <li>Reviewing a <i>patient's</i> fitness for release from compulsory status. If at any time during the currency of a compulsory treatment order, the responsible clinician considers that the <i>patient</i> is fit to be released from compulsory status, directing their release from compulsory status (<i>and deciding on appropriate ongoing care arrangements</i>).</li> </ul>  |
| Part 4                      | <p>No particular responsibilities are identified in relation to the responsible clinician. Instead, the DAMHS or the person in charge of the hospital has particular responsibilities. The responsible clinician, however, must undertake the following:</p> <p>Informing these other people of various matters in relation to special <i>patients</i>, including suitability/need for transfers, escapes and absences without leave, suitability for leave (and appropriate conditions) and the need for direction for return from leave.</p> <ul style="list-style-type: none"> <li>Drawing to the attention of the DAMHS any <i>patients</i> presenting particular difficulties, who may be considered for restricted <i>patient</i> status.</li> </ul> |
| Section 58                  | <ul style="list-style-type: none"> <li>Directing appropriate treatment for a mental disorder that the <i>patient</i> undergoing assessment must accept (<i>such treatment being comprehensive, and not limited to bio-medical interventions</i>).</li> </ul>   |
| Section 59                  | <ul style="list-style-type: none"> <li>Directing appropriate treatment for mental disorder for the first month of the compulsory treatment order that the <i>patient</i> undergoing assessment must accept (<i>such treatment being comprehensive, and not limited to bio-medical interventions</i>).</li> <li>Arranging provision of written consent to treatment by the <i>patient</i> or referring the case to a review tribunal-approved psychiatrist for an</li> </ul>  |

| Mental Health Act provision | Tasks required by Act ( <i>and implied actions</i> )  |
|-----------------------------|---|
|                             | <p>opinion in regard to treatment continuation prior to the expiry of one month from the date of establishment of the treatment order.</p> <ul style="list-style-type: none"> <li>• Wherever practicable, seeking to obtain the <i>patient's</i> consent to any treatment even though that treatment may be authorised by or under this Act without the <i>patient's</i> consent.</li> </ul>  |
| Section 60                  | <ul style="list-style-type: none"> <li>• Arranging for the <i>patient</i> to give their fully informed written consent to electro-convulsive treatment or</li> <li>• referring the case to a review tribunal-approved psychiatrist to consider whether electro-convulsive treatment is in the best interest of the <i>patient</i> in the absence of consent.</li> </ul>   |
| Section 61                  | <ul style="list-style-type: none"> <li>• Arranging for the <i>patient</i> to give fully informed written consent to brain surgery and</li> <li>• arranging for consideration by the review tribunal to: <ul style="list-style-type: none"> <li>– appoint a psychiatrist (who has consulted with two other health professionals currently concerned with the <i>patient's</i> care) approved for this purpose and</li> <li>– determine whether the <i>patient</i> has consented freely.</li> </ul> </li> </ul>   |
| Section 62                  | <ul style="list-style-type: none"> <li>• Determining urgency of treatment.</li> </ul>   |
| Part 6                      | <p>Part 6 makes few specific references to the responsible clinician. <i>As clinician in charge of the patient, however, the responsible clinician has an implied responsibility to ensure that the various identified rights are respected.</i></p> <ul style="list-style-type: none"> <li>• Determining appropriateness of the use of seclusion and providing authority for such use.</li> <li>• Determining whether a visit or call would be detrimental to the interests of the <i>patient</i> and to their treatment</li> <li>• Assisting with rectification of breaches of rights.</li> <li>• Assisting with arrangements for the <i>patient</i> to obtain independent psychiatric consultation and being available as practical to that psychiatrist for discussion.</li> <li>• Formal review of the condition of every <i>patient</i> at specified intervals.</li> <li>• Considering fitness for release.</li> <li>• Completing specified documents and forwarding them to identified parties.</li> </ul>   |
| Section 76                  | <ul style="list-style-type: none"> <li>• Formal review of a <i>patient</i> (other than a restricted <i>patient</i>) subject to a compulsory treatment order or section 34(1)(a)(i) of the CP(MIP) Act not later than three months after the date of the order and thereafter at intervals of no longer than six months.</li> <li>• Notifying the <i>patient</i> of the formal review.</li> <li>• Consulting with the family or whānau of the <i>patient</i> or <i>proposed patient</i>, unless there are reasonable grounds to consider that such consultation is not in the best interests of the <i>patient</i> or <i>proposed patient</i> or is not reasonably practicable (in accord with the guidelines developed to assist with this purpose). It is expected at this stage of the Act, that family and whānau consultation is reasonably practicable due to the three- and six-month timeframes.</li> <li>• Determining whether the <i>patient</i> is fit for release from compulsory status.</li> <li>• Recording the findings of the review.</li> <li>• Send the certificate of clinical review, the responsible clinician's reasoning and any relevant reports from other health professionals to the DAMHS.</li> </ul> |

| Mental Health Act provision | Tasks required by Act ( <i>and implied actions</i> )   |
|-----------------------------|--|
|                             | <ul style="list-style-type: none"> <li>If the responsible clinician is of the opinion the <i>patient</i> is not fit to be released from compulsory treatment, forwarding copies of specified documents to identified parties (set out in section 76(7)(b)) and giving or sending a statement of the legal consequences of finding and of the recipient's right to apply for review to identified parties (set out in section 76(7)(b)(i) to (iv)).</li> <li><i>Determining appropriate voluntary treatment options for those no longer requiring compulsory status.</i></li> </ul>   |
| Section 77                  | <ul style="list-style-type: none"> <li>Formal review of special <i>patients</i>, detained in hospital pursuant to an order made under section 24(2)(a) of the CP(MIP) Act, with consideration of whether the <i>patient</i> is still unfit to stand trial.</li> <li>Recording the findings of the review.</li> <li>Forwarding copies of specified documents to identified parties.</li> <li>Additional provisions in section 77 apply for special <i>patients</i> who were ordered to be detained following a finding of unfitness to stand trial or acquittal on account of insanity.</li> </ul>  |
| Section 78                  | <ul style="list-style-type: none"> <li>Formal review of the condition of every restricted <i>patient</i>, with consideration of whether the <i>patient</i> is fit to be released from compulsory status or should continue to be declared a restricted <i>patient</i>.</li> <li>Recording the findings of the review.</li> <li>Forwarding copies of specified documents to identified parties (section 76(7)(b)).</li> </ul>   |
| Section 79                  | <ul style="list-style-type: none"> <li>Provision of reports for review tribunal hearings, and participation in such hearings.</li> <li>Receiving a copy of the review tribunal decision and, where the decision is to release someone from compulsory status, considering a course of action in regard to further treatment thought to be necessary.</li> </ul>  |
| Section 80                  | <ul style="list-style-type: none"> <li>As for section 79, but with regard to special <i>patients</i>.</li> </ul>   |
| Section 81                  | <ul style="list-style-type: none"> <li>As for section 79, but with regard to restricted <i>patients</i>.</li> </ul>  |
| Section 83                  | Section 83 contains no specific reference to the responsible clinician, but participation in review by the court in response to an appeal by the <i>patient</i> against a review tribunal hearing decision may be required.  |
| Section 84                  | Section 84 contains no specific reference to the responsible clinician, but participation in a judicial inquiry may be required.   |
| Part 8                      | Part 8 contains no specific criteria for the responsible clinician in relation to <i>patients</i> under the age of 17, it does however, direct that wherever practicable, an assessment examination of a proposed patient who is under the age of 17 years shall be conducted by a psychiatrist practising in the field of child psychiatry. Alternatively, the responsible clinician should consult with a child psychiatrist.  |
| Section 90                  | <p>The responsible clinician must undertake a review of a <i>patient</i> who will attain the age of 17 years during the currency of a treatment order not earlier than two months and not later than one month before the date on which the <i>patient</i> will attain the age of 17 years.</p> <ul style="list-style-type: none"> <li>Determining whether the <i>patient</i> is fit for release from compulsory status.</li> <li>Recording the findings of the review.</li> <li>Sending the certificate of clinical review, the responsible clinician's reasoning and any relevant reports from other health professionals to the DAMHS.</li> </ul> |

| Mental Health Act provision | Tasks required by Act ( <i>and implied actions</i> )   |
|-----------------------------|--|
|                             | <ul style="list-style-type: none"> <li>• If the responsible clinician is of the opinion the <i>patient</i> is not fit to be released from compulsory treatment, forwarding copies of specified documents to identified parties (set out in section 76(7)(b)) and giving or sending a statement of the legal consequences of the finding and of the recipient's right to apply for review to identified parties (set out in section 76(7)(b)(i) to (iv)).</li> <li>• <i>Determining appropriate voluntary treatment options for those no longer requiring compulsory status.</i></li> </ul> |
| Section 95                  | This section sets out issues in regard to district inspector inquiries. By implication, the responsible clinician may be required to provide information in regard to any aspect of service (within their capacity and mandate to comment).  |
| Section 114                 | This section refers to neglect or ill-treatment of mentally disordered persons. Direct ill treatment or neglect is subject to identified sanctions. It is possible that failure to act on neglect or ill-treatment by others responsible for mentally disordered persons may be included in this section.  |
| Section 115                 | This section refers to assisting <i>patients</i> to be absent without leave, and the sanction for this. By implication, responsible clinicians must not provide such assistance.   |
| Section 116                 | This section refers to unlawful publication of reports of proceedings before a review tribunal. By implication, the responsible clinician must carefully handle reports in accord with the first schedule to the Act.  |
| Section 117                 | This section refers to non-obstruction of inspection by a district inspector. By implication, the responsible clinician must assist the district inspector to the extent necessary for that inspector to properly conduct their duties.  |
| Sections 118 and 119        | <ul style="list-style-type: none"> <li>• Completing certificates and documents that are misleading or false.</li> </ul>  |
| Section 122                 | <ul style="list-style-type: none"> <li>• Acting in good faith.</li> </ul>  |
| Section 123                 | <ul style="list-style-type: none"> <li>• Vetting incoming mail and, with the approval of the DAMHS opening and, in some instances, withholding mail from the <i>patient</i>.</li> </ul>  |
| Section 124                 | <ul style="list-style-type: none"> <li>• Vetting outgoing mail and in some circumstances, opening and checking mail, and withholding from posting.</li> </ul>  |
| Section 125                 | <ul style="list-style-type: none"> <li>• Redirecting withheld incoming mail to the sender or to a district inspector. Redirecting withheld outgoing mail to the district inspector.</li> <li>• Informing the <i>patient</i> of withheld incoming or outgoing mail, unless the responsible clinician is satisfied that this information would be detrimental to the <i>patient's</i> interests or treatment.</li> </ul>   |
| Section 127                 | <ul style="list-style-type: none"> <li>• Transferring <i>patients</i>. No specific responsibilities of the responsible clinician are identified in relation to transfer of <i>patients</i>, but there are clear implications in regard to the transfer of information and the arrangements for safe physical transfer of the patient.</li> </ul>   |
| Section 128                 | <ul style="list-style-type: none"> <li>• No specific responsibilities are identified for the responsible clinician, but there are clear implications in regard to safe arrangements for transfer of the <i>patient</i> out of New Zealand and for the communication of information to other parties who may be involved in care.</li> </ul>  |
| Section 130                 | <ul style="list-style-type: none"> <li>• No specific responsibilities are identified for the responsible clinician, but there are clear implications in regard to compliance with standards of any sort promulgated by the Director-General of Health.</li> </ul>  |
| Section 132                 | <ul style="list-style-type: none"> <li>• Notifying the police (forthwith) of the death of any <i>patient</i> (whether within or outside the hospital).</li> </ul>  |

| Mental Health Act provision | Tasks required by Act ( <i>and implied actions</i> )  |
|-----------------------------|---|
|                             | <ul style="list-style-type: none"> <li>• Notifying the Director (within 14 days) of the death of any <i>patient</i> (whether within or outside the hospital), the apparent cause of death and the name of any member of the staff of a service who was present at the death.</li> <li>• Ensuring that the identified next of kin or named support person are informed of the death of any <i>patient</i> as soon as practicable after it occurs.</li> </ul> |
| Section 133                 | <ul style="list-style-type: none"> <li>• Ensuring that documents are given or sent in such a manner that there is a reasonable surety that they will be received, in accord with methods outlined in section 133.</li> </ul>  |



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# Appendix 1 Guidance on registered nurses completing section 8B examinations

**(Mental Health Act (Compulsory Assessment and Treatment) Act 1992)**

## Introduction

This document has been collaboratively developed and endorsed by Te Ao Māramatanga (New Zealand College of Mental Health Nurses) and the national group of Directors of Mental Health Nursing. A working group also included the expertise of Directors of Area Mental Health Services (DAMHSs) who are registered nurses and representation from Ara Poutama Aotearoa, Department of Corrections and the New Zealand Nurses Organisation (Mental Health Nurse Section).

The Director of Mental Health supports and endorses this guidance.

The purpose of this guidance is to assure DAMHSs who receive applications for compulsory assessment with section 8B certificates completed by nurses that these nurses meet an appropriate standard of competency for conducting the examination.

Due to the seriousness of legal compulsion and the changing health sector, the process for approving suitable nurses for performing this legal function needs to ensure public safety, improve nurses' professional protection and provide a consistent national approach.

## Background

The Health Practitioners (Replacement of Statutory References to Medical Practitioners) Bill was introduced on 31 January 2018. Further amendments occurred in August 2020. One of the key laws changed was the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Mental Health Act); the changes aimed to:

- allow for health practitioners with the required competencies and knowledge to perform more statutory functions
- make it easier for the public to access statutory health services
- allow the health workforce to use their knowledge and skills
- facilitate innovative services and efficient practices.

One key change was to allow nurse practitioners and registered nurses practising in mental health to be able to issue a certificate under section 8B to accompany an application for assessment.

The Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021 defines a 'registered nurse practising in mental health' as:

*... a health practitioner who is, or is deemed to be, registered with the Nursing Council of New Zealand by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing and whose scope of practice includes the assessment of the presence of mental disorder as defined under this Act; and who holds a current practising certificate.*

The change was not intended to allow nurses to replace medical practitioners, but rather to provide an alternative when unreasonable delay would occur if a medical practitioner were unavailable. This is more likely to apply in rural and remote areas, where unavailability of a medical practitioner is more likely.

## Legal and competency requirements for performing the section 8B examination

Nurses who perform a section 8B examination should demonstrate a high level of expertise; that is, an appropriate level of experience, knowledge and skills. Inadequate knowledge of mental disorder and inadequate understanding of the context of legal compulsion under the Mental Health Act may adversely affect:

- human rights
- procedural justice
- least restrictive practice
- access to treatment that the Mental Health Act process can provide
- health inequities and Te Tiriti obligations
- legal and professional vulnerability.

Under-recognition of mental disorder and overuse of compulsion are also undesirable consequences.

## Competence to assess mental disorder

In practice, since the law changed, many DAMHSs have already considered and endorsed nurses who may complete section 8Bs within their mental health and addiction specialist services. The endorsement criteria and processes will vary. However, we note that they will generally apply for those specialist services only; they may not apply to nurses in other areas of practice; for example, Ara Poutama, primary or non-government organisations, and iwi providers.

Judgement of competence requires consideration of education, qualification, training, skills, experience and attitude. It follows that DAMHSs should in collaboration with their Director of Mental Health Nursing or equivalent senior nurse role, develop a

process for identifying which registered nurses within the DAMHS' locality are suitably competent for this role. The process for application should be communicated to the relevant services and agencies within their area. The DAMHS should seek nursing input from their services' most senior nurse leader in making approval decisions.

All registered nurses who have achieved Nursing Council of New Zealand nurse registration through either single mental health nursing training or comprehensive undergraduate training have the 'scope' described in the Mental Health Act. However, not all nurses work in mental health or have experience and postgraduate specialty training in mental health.

While every nurse is expected to recognise and engage with mental distress and illness, there remains a substantial variation in knowledge and skill levels.

## Existing guidance

In 2018, Te Ao Māramatanga published the *Practice Note: Nursing Practice and Section 8B – Mental Health (Compulsory assessment and Treatments) Act 1992*.

This document provides guidance to nurses performing the section 8B examination, and concludes with the following statement:

*As health practitioners, nurses are responsible for practising both within their scope of practice as defined by the Nursing Council of New Zealand, and within their level of competence. The College suggests that nurses who may be asked to issue section 8B certificates seek clarification of this function from their Director of Area Mental Health Services.*

Nurses working in specialist mental health and addiction services might generally be considered to have the knowledge and skills required to assess mental disorder and have an understanding of the Mental Health Act. However, many hospital specialist mental health and addiction services and DAMHSs have previously required the additional legal knowledge and skills provided by duly authorised officer (DAO) training and/or specific training for section 8B examinations.

Outside these hospital specialist mental health and addiction services, the assurance of a similar level of competency may be less clear.

Nurses with highly developed skills and experience may not necessarily be working in a recognised mental health role, or that role may not be recognised as a mental health role; for example, in primary care. Many primary care nurses are now credentialled in mental health. Many nurses in non-hospital specialist mental health settings have specialist mental health nursing training and experience. Some of these nurses might be entirely competent to perform section 8B examinations. Conversely, new graduate nurses or other registered nurses without specific mental health experience or training might be less competent.

Therefore, it is appropriate for DAMHSs to consider registered nurses working outside hospital specialist mental health services individually. An approval and registration process with DAMHS offices will provide a high level of confidence that section 8B

certificates (and indeed situations where section 8B certificate is not necessary) are reliable.

The DAMHS should consider and approve nurses outside of hospital specialist mental health services individually.

The DAMHS or the Director of Mental Health Nursing may wish to review applications, or they may provide approval based on recommendation from a senior nurse or clinician in the non-hospital health provider.

Each DAMHS and Director of Mental Health Nursing should hold the register of the approved nursing groups and of approved individuals. The register should be available to DAOs arranging and receiving section 8B certificates on behalf of the DAMHS.

## Inclusion criteria for nurses performing functions under section 8B

The Ministry of Health expects that registered nurses who perform functions under section 8B have a good understanding of the statutory definition of mental disorder and of the Mental Health Act. The understanding of the need to involve a DAO is essential.

The task of a section 8B examination is to consider, assess and make a decision on whether there are reasonable grounds for believing a person may be suffering from a mental disorder. Therefore, the nurse requires the ability to assess for an abnormal state of mind, (the first limb of the definition of mental disorder) and a minimum skill set to perform a mental state examination.

The second limb of the definition requires consideration of clinical risk; therefore, nurses must have a strong level of knowledge of the clinical risks ensuing from mental disorder as well as the ability to judge when the threshold is met for a mental disorder that 'poses a serious danger' or 'seriously diminishes the capacity of that person to take care of himself or herself'.

The examination needs to consider other possible causations for the presentation. For example:

- delirium
- dementia
- intellectual disability
- brain disease or trauma
- intoxication or withdrawal from substance.

The following registered nurses are most likely to be suitable to conduct a section 8B examination.

- nurse practitioners, especially those working within mental health and addictions
- registered nurses working as DAOs (independent of their DAO role) or with previous DAO experience

- registered nurses with at least two years' practice who are working within a mental health setting
- registered nurses who have completed postgraduate education in mental health and co-existing problems.

A nurse not currently employed in a specialist mental health service may still be suitable if they are:

- a registered nurse who has completed postgraduate education in mental health
- a registered nurse who has previous experience working within a mental health setting.

The DAMHS may also consider requiring training such as:

- section 8B training
- mental state examination training
- other Mental Health Act training
- other relevant clinical and medico-legal training.

The DAMHS and Director of Mental Health Nursing or equivalent senior nurse should ensure quality and training issues related to section 8B processes are monitored and addressed.

## Additional guidance for nurses approved to conduct section 8B examinations

A section 8B examination is not a comprehensive psychiatric examination. The Section 8B medical certificate, supporting a section 8A application for assessment certificate, requires the health practitioner or approved registered nurse to briefly state why there are reasonable grounds for believing the person may be suffering from a mental disorder.

Nurses acting as health practitioners under section 8B(1) should therefore assess the proposed patient in terms of the criteria for 'mental disorder' in section 2 of the Mental Health Act.

The term 'mental disorder' as defined in section 2 is broad in terms of the abnormal state of mind and narrow in terms of serious danger to self and/or others or serious inability to care for self.

**mental disorder**, in relation to any person, means an abnormal state of mind (whether of a continuous or an intermittent nature), characterised by delusions, or by disorders of mood or perception or volition or cognition, of such a degree that it—

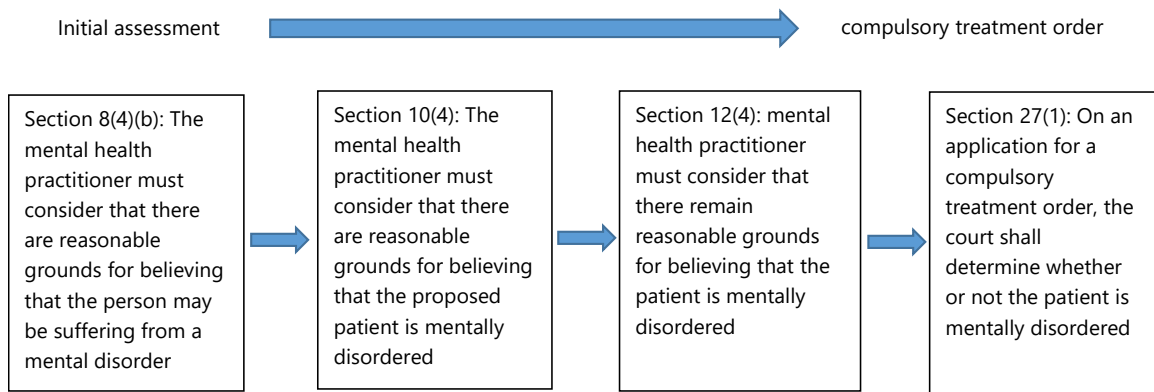
- poses a serious danger to the health or safety of that person or of others; or
- seriously diminishes the capacity of that person to take care of himself or herself.

Section 8B(4) requires the health practitioner issuing the certificate to:

- examine the person; and

- (b) if he they consider that there are reasonable grounds for believing that the person may be suffering from a mental disorder, issue the certificate.

The following figure illustrates the different levels of consideration of the definition of mental disorder as a person progresses through the assessment phase of the mental health Act.



The Mental Health Act states that an application is made under section 8A when the DAMHS receives a filled-out application form that is accompanied by a certificate issued under section 8B. The section 8B certificate states the date of the examination, which must be within the three days prior to the date of the section 8A application.

Best practice dictates that the two parts of the completed application (section 8A and section 8B certificates) are completed on the same day. This helps to ensure that the requirements of section 7A(2) and section 38(4)(e) are met.

Any nurse completing a section 8B certificate must not be the DAO who makes the section 9 arrangements, including the provision of notice to the proposed patient.