

Briefing

Ministerial responsibilities under mental health and addiction legislation

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Contact for telephone discussion

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Minister's office to complete:

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| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined | <input type="checkbox"/> Noted |
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| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn | |

Comment:

Ministerial responsibilities under mental health and addiction legislation

Security level: IN CONFIDENCE

Date: 8 February 2024

To: Hon Matt Dooney, Minister for Mental Health

Purpose of report

1. This briefing provides an overview of mental health and addiction legislation and your legislative role in the management of special patients and restricted patients under the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Mental Health Act). The Prime Minister has assigned these responsibilities to you in your role as Minister for Mental Health. In legislation, the Minister of Health is referenced however these are now your responsibilities.

Summary

2. The Office of the Director of Mental Health and Addiction (ODMHA) within the Ministry of Health has statutory and regulatory responsibility and oversight for the Mental Health Act and the Substance Addiction (Compulsory Assessment and Treatment) Act 2017 (the SACAT Act).
3. As Minister for Mental Health, you have responsibility for certain decisions regarding special and restricted patients. You will receive advice from the Director of Mental Health to help inform your decisions.
4. Special patients are individuals who are detained in a mental health facility by Court order after being charged or convicted of an offence, or who have been transferred from prison for specialist mental health treatment. These individuals receive care and treatment in these specialist facilities, rather than in the Department of Corrections' services, due to their mental disorder. Restricted patients are people detained in mental health facilities whom the Court has determined pose a danger to others. These Court orders are very rare.
5. Special and restricted patients may progress to a point where it is appropriate for them to be granted leave in the community for more than 7 days, or to receive a change of their legal status. There are around 50 to 60 ministerial decisions required annually regarding leave or changes of legal status for special patients.
6. Ministerial involvement in decision-making for these individuals is being considered as part of the work underway to repeal and replace the Mental Health Act.
7. The information in the appendices is intended as an easy-access guide for your ongoing use.

Recommendations

We recommend that you:

- a) **note** the ministerial responsibilities under mental health and addiction legislation assigned to you by the Prime Minister, in your role as Minister for Mental Health
- b) **note** that you will need to make decisions regarding special and restricted patients.



Kiri Richards
Acting Deputy Director-General
Clinical, Community and Mental Health
Date: 8 February 2024

Hon Matt Doocey
Minister for Mental Health
Date:

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Ministerial responsibilities under mental health and addiction legislation

Context

1. The Office of the Director of Mental Health and Addiction (ODMHA) monitors, oversees and advises on the use of compulsory mental health and addiction treatment legislation in New Zealand. It is responsible for the administration of this legislation under the direction of the Minister of Health, Minister for Mental Health, and the Director-General of Health.
2. These pieces of legislation include the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Mental Health Act) and the Substance Addiction (Compulsory Assessment and Treatment) Act 2017 (the SACAT Act). An overview of these pieces of legislation is included in Appendix 1.
3. The Mental Health Act provides for a Director of Mental Health and the SACAT Act provides for a Director of Addiction Services. Both roles have functions, duties and powers conferred on them by their relevant legislation, as outlined in Appendix 1. These statutory roles are both held by Dr John Crawshaw.
4. Under the Mental Health Act, the Minister of Health has specific responsibilities with respect to special and restricted patients. These responsibilities have been assigned to you as the Minister for Mental Health.
5. Special patients are individuals who have been charged with or convicted of a criminal offence and ordered by a court to be detained in a mental health facility as a result. Restricted patients are compulsory mental health patients who present special difficulties because of the danger they pose to themselves and others, however, they have not necessarily been charged with a criminal offence.
6. Further detailed information on the types of special and restricted patients can be found in Appendix 2. An overview of special patient pathways is provided in Appendix 3. Key definitions of terms relating to special and restricted patients can be found in Appendix 4.

Ministerial decisions about special and restricted patients under the Mental Health Act

7. Under the Mental Health Act and the Criminal Procedure (Mentally Impaired Persons) Act 2003 (the Criminal Procedure Act), you have decision-making power regarding certain aspects of a special or restricted patient's rehabilitative pathway. This includes the powers to grant a patient leave from hospital for a period longer than 7 days and to remove a person's special patient legal status.
8. Special patients are individuals who have been charged with, or convicted of, a criminal offence and ordered by a court under the Criminal Procedure Act to be either: held on remand in a hospital while awaiting trial, detained in a hospital after being found unfit to stand trial, or detained in a hospital after being acquitted on account of insanity.

9. In addition, people who have been transferred from prison to a mental health facility under the Mental Health Act are considered special patients for the duration of their stay in a mental health facility. While some of this category of special patients are eligible for long leave, in practice this does not occur as the person is transferred back to prison when their condition improves.
10. Restricted patients are individuals who present with special difficulties in their management due to their mental health condition and the danger they pose to others. They require more restrictive care than those under a Mental Health Act compulsory treatment order, typically in a forensic setting, despite not having committed an offence.
11. A special or restricted patient's responsible clinician is accountable for the patient's clinical management in the forensic mental health service. As part of the rehabilitative process for these individuals, they have opportunities to be granted leave from the forensic mental health service they have been detained in, and as their rehabilitation progresses the possibility arises for a change of their legal status.
12. Applications for ministerial long leave from hospital (long leave) and changes of legal status require a decision by you (and/or the Attorney-General for those found unfit to stand trial). You will be asked to make these decisions about special patients who are subject to orders under section 24(2)(a) of the Criminal Procedure Act, and who have been found not guilty by reason of insanity¹ or deemed unfit to stand trial.
13. Restricted patients are subject to the same leave provisions as special patients. This means you could also be asked to make decisions about long leave under section 50A of the Mental Health Act, despite them not being charged or having convicted of an offence. If a responsible clinician finds that a restricted patient still requires compulsory treatment, but not under a restricted order, the responsible Minister will be asked to consult with the Attorney-General on whether the restricted patient order can be revoked.
14. This level of decision-making reflects the seriousness of special patient and restricted patient status, and the need to ensure that a wide range of factors are considered when making such decisions. The Director of Mental Health also considers these applications and provides advice to assist your decision-making, including whether or not he supports the application being granted.
15. The number of special patients who may require ministerial decision-making is relatively small, with approximately 150 people currently detained under these provisions. There are currently only 4 people with restricted patient status. Approximately 50 to 60 ministerial decisions are required for special patients each year.

¹ The Rights for Victims of Insane Offenders Act 2021 amended this to "act proven but not criminally responsible on account of insanity". Most current special patients are under the previous "not guilty" provision. New special patients who are acquitted due to insanity will have this new finding.

Ministerial long leave (section 50A of the Mental Health Act)

16. Section 50A of the Mental Health Act gives you the discretion to grant a special patient a leave of absence from hospital if 2 medical practitioners certify that the patient is fit to be absent from hospital and if the Director of Mental Health supports the proposed leave.
17. When a responsible clinician assesses a special patient as fit to be absent from hospital for 7 days or more, an application will be submitted to the Director of Mental Health for consideration of long leave. The application must be supported by the forensic Director of Area Mental Health Services (DAMHS), who is responsible for the operation of the Mental Health Act in an area or region. DAMHS are employees of Health New Zealand (HNZ) who have been appointed to the DAMHS position by the Director-General of Health under section 92 of the Mental Health Act.
18. Long leave applications will typically follow a sustained period of successful short leaves in the community. Short leaves are granted by the Director of Mental Health. The long leave application contains supporting documents such as:
 - a. clinical progress notes and any notable incidents
 - b. a risk assessment and management plan for the patient while on leave
 - c. the proposed conditions of leave
 - d. a certificate, signed by 2 medical practitioners, stating that the patient is fit to be absent from hospital (as per section 50A(1) of the Mental Health Act).
19. The Director of Mental Health will review all information provided, giving careful consideration to the rights and rehabilitation needs of the patient and the protection of the public. This cautious approach enables both the service and the patient to develop a clear understanding of the course of treatment and future goals and gives due consideration to public safety.
20. You will then be provided with a briefing setting out the Director of Mental Health's advice and requesting your decision. The briefing summarises the relevant aspects of the special patient's rehabilitative progress, risk, and management plan.
21. If you choose to grant a period of long leave, a leave of absence direction attached to the briefing for you to sign gives effect to your decision. The leave of absence includes standard conditions of leave and may contain conditions that are particular to certain patients to manage specific aspects of their risk or treatment, or conditions relating to any victim (detailed further below).
22. It is convention to grant long leave for an initial period of 6 months, followed by subsequent periods of 12 months if the initial leave is successful. If you choose not to approve a period of long leave, no further action is required. The Director of Mental Health will write to the patient's responsible clinician and the DAMHS to advise of the outcome of the application.

Revoking ministerial long leave

23. Occasionally, you may be asked to revoke long leave under section 50G of the Mental Health Act. This may be necessary if a special patient: breaches their conditions of leave; if their condition deteriorates and they need a period of treatment in hospital; or if there are concerns about the safety of the special patient or the public.

24. A revocation of long leave needs urgent attention as the Mental Health Act requires you to sign the revocation within 72 hours of the patient's return to hospital. If this does not happen, the patient is legally allowed to return to the community.
25. While revoking long leave is disappointing in terms of the patient's progress, timely leave revocation demonstrates that the system in place for long leave is effective in terms of identifying and managing risks to the patient and others.

Changes of legal status

26. Special patients acquitted on account of insanity may be considered for a change of legal status. When a responsible clinician assesses that a special patient no longer requires special patient status, an application will be submitted to the Director of Mental Health for consideration. Applications must be supported by the forensic DAMHS.
27. The Director of Mental Health reviews the application, giving careful consideration to the progress of the special patient and the protection of the public. The Director of Mental Health will provide you with a briefing summarising the special patient's progress over time, their treatment and rehabilitation activities, as well as any significant adverse events and risk considerations, and a recommendation about the special patient's legal status for your consideration.
28. Under section 33(3) of the Criminal Procedure Act you are required to decide whether continued detention for a special patient is necessary to safeguard the patient's own interests and the safety of the public or a person or class of person. You will be assisted in your decision by advice and a recommendation from the Director of Mental Health as noted above.
29. In deciding whether special patient status is no longer necessary for the to safeguard the patient's own interests and the safety of the public or a person or class of person,, considerations of risk are central. The Director of Mental Health's advice will include information on the special patient's risk to self and others, as assessed by the responsible clinician using clinical tools. The range of protections and mitigations put in place by the mental health service and the patient themselves will also be considered.
30. Considerations of risk are complex and multifactorial, but some key factors include:
 - a. the stability of the special patient's mental state and abstinence from substance use
 - b. the special patient's understanding of their mental health and how it links to their offending
 - c. their level of engagement in treatment and rehabilitation plans and activities, and an understanding of how treatment reduces their risk of future harmful behaviour
 - d. other protective factors, such as a relationship with family and whānau and meaningful engagement in community life (eg, work, education, or cultural activities)
 - e. the length of time spent living in the community on leave without incident as opposed to recurrence of behaviour mirroring the original offence
 - f. evidence of a robust management plan for the patient, should they be granted a change of legal status

- g. whether they can be adequately managed as a compulsory patient under the Mental Health Act
 - h. the views of registered victims, if any.
31. If you find that the special patient's continued detention is no longer necessary to to safeguard the patient's own interests and the safety of the public or a person or class of person, you may direct that the individual be held as a patient subject to a compulsory treatment order under the Mental Health Act, or that they be discharged. The Director of Mental Health's advice will have attached a direction for your signature, should you choose to grant a change of status.

Change of status for special patients found unfit to stand trial

32. Most decisions about the legal status of special patients who have been found unfit to stand trial are made by the Attorney-General, as set out in section 31 of the Criminal Procedure Act.
33. However, on rare occasions you may be required to make a decision in concurrence with the Attorney-General. Clinicians can request a change of legal status if the patient remains unfit to stand trial, but special patient status is no longer required as they can be managed under a regular compulsory treatment order. This is a rare event.

Mental Health Review Tribunal findings

34. The Mental Health Review Tribunal (the Tribunal) is appointed by you under the Mental Health Act. The principal role of the Tribunal is to consider whether a patient is fit to be released from compulsory status. The Tribunal is comprised of one lawyer, one psychiatrist, one community member, and several deputy members.
35. Every person subject to a compulsory treatment order is required to have their condition reviewed at least every 6 months. Should a patient disagree with their responsible clinician's decision that they are not fit to be released from compulsory status, the patient can apply to the Tribunal for a review of his or her condition.
36. Special patients are subject to different processes. Applications for a change of legal status can arise when the Tribunal issues a certificate stating that in their opinion, it is no longer necessary for a person to be held as a special patient. Section 80(5)(a) of the Mental Health Act mandates the Tribunal to consider whether 'the patient's condition still requires, either in the patient's own interest or for the safety of the public, that he or she should be subject to the order of detention as a special patient'.
37. The Tribunal describes the threshold for 'requires' as high, and falling between expedient and desirable on one hand and essential on the other. The Tribunal will consider the patient's interest, the safety of the public and immediate and longer-term factors, including what may happen if the patient is not a special patient.
38. The Director of Mental Health will seek advice from the forensic mental health service on their view of the patient's condition and clarification of any aspects of the Tribunal's decision. The process for seeking a ministerial decision on a Tribunal finding is the same as that described above for changes of legal status.

Restricted patient leave and change of legal status

39. You are required to make decisions about a restricted patient's detention when:
 - a. the responsible clinician has applied for long leave
 - b. the responsible clinician or Tribunal has found that, while the restricted patient remains mentally disordered, it is not necessary for them to remain subject to restricted patient status.
40. Restricted patient long leave is handled the same way as special patients. Change of legal status recommendations, in the situation described in paragraph 39(b), must be agreed by you in concurrence with the Attorney-General.
41. If a restricted patient is found to be fit to be completely released from compulsory status, the Director of Mental Health has the power to direct them to be released or to apply to the Tribunal for a review of the restricted patient's condition.

Victims of special patients

42. Victims of crimes can apply to the New Zealand Police to become a registered victim. Police then assess whether any victim is eligible to receive notifications (see paragraph 45), based on the legal status of the offender and the type of offence. A victim may choose not to become a registered victim.
43. The Rights for Victims of Insane Offenders Act 2021 (the Rights for Victims Act) came into force on 14 December 2022. This Act aims to give registered victims of special patients rights that are comparable to victims of other criminal offenders. The Rights for Victims Act amended the Victims' Rights Act 2002, the Mental Health Act, and the Criminal Procedure Act.
44. The amount of information and the number of notifications given to registered victims increased because of the Rights for Victims Act. The Act also allows registered victims to make a submission before certain decisions are made with regards to special patients.
45. Notifications for registered victims of special patients are given when an application is put forward for:
 - a. leave under section 52 of the Mental Health Act (short leave), if that leave of absence would permit the special patient to have less restrictive care than any previously granted leave of absence
 - b. leave under section 50A of the Mental Health Act (ministerial long leave)
 - c. a change of legal status under section 31(3) or 33(3) of the Criminal Procedure Act
 - d. a Mental Health Review Tribunal hearing under section 80 of the Mental Health Act.
46. A registered victim is also told as soon as it is practicable if the special patient is due to be discharged (released from special patient status), dies, escapes (is absent without leave), or comes to the end of their sentence (if applicable).
47. Registered victims are invited to submit on any of the events noted in paragraph 45 above. Submissions made by a registered victim are reviewed by the Director of Mental Health, who will consider any necessary mitigations to balance the interests of the special patient and the victim. This may include extra conditions being placed on the special patient's leave of absence.

Next steps

48. A Bill to repeal and replace the Mental Health Act is currently being drafted and will include new and enhanced oversight mechanisms [SWC-23-MIN-0096]. Of relevance to special patients, the Bill will shift responsibility for decisions about leave and change of legal status for special patients from the Minister of Health or Minister for Mental Health to an independent body, that is a Special Patient Review Tribunal. New legislation will require the Minister of Health to establish a Special Patient Review Tribunal.
49. This change was recommended by the Law Commission in its 2010 report [*Mental Impairment Decision-Making and the Insanity Defence*](#). The Law Commission sought to avoid any potential for politicisation of decisions, and to improve procedural fairness for special patients who do not have an opportunity to be heard in the existing process.
50. The Special Patient Review Tribunal will still need to consider and balance important factors like best mental health outcomes with public safety and the voice of victims. Existing rights and protections for victims will not be affected.
51. Dr John Crawshaw, the Director of Mental Health, is available to discuss this briefing with you and generally to assist you to make these decisions.

ENDS.

Appendix 1: Overview of mental health and addiction legislation

Mental Health (Compulsory Assessment and Treatment) Act 1992

1. The Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Mental Health Act) provides a legal framework for the circumstances in which a person may be subject to compulsory mental health assessment and treatment. It outlines rights for patients and the protection of those rights, and oversight mechanisms for monitoring the care provided to them.
2. A person may only be made a patient under the Mental Health Act if they have a mental disorder that poses a serious danger to themselves or others, or seriously diminishes their capacity to take care of themselves. They cannot be made subject to the Act solely for reasons of substance abuse, intellectual disability, or political, religious, or cultural beliefs (further expanded on in section 4 of the Mental Health Act). People who have been charged with or convicted of a criminal offence, may be ordered to be held as a special patient, as per the Criminal Procedure (Mentally Impaired Persons) Act 2003. More detail on special patient decisions is provided under the heading 'Ministerial decisions about special and restricted patients' above.
3. The Mental Health Act promotes the principle of least restrictive intervention through its focus on: regular consultation between clinicians and patients, their whānau, legal guardians, or support network, good clinical practice, and an approach that favours community treatment over inpatient care, where appropriate.
4. The Mental Health Act includes statutory roles that monitor the functioning of the Act and the treatment patients receive: the Director of Mental Health; the Deputy Director of Mental Health; Directors of Area Mental Health Services (DAMHS); and district inspectors of mental health.
5. The Director of Mental Health (and the Deputy Director of Mental Health on delegation by the Director of Mental Health) is responsible for the general administration of the Mental Health Act, under the direction of the Minister of Health, the Minister for Mental Health, and the Director-General of Health. The Director of Mental Health and Director-General of Health may also issue guidelines and standards on the care and treatment of patients, and they have specific powers relating to special patients and their rehabilitation.
6. DAMHS are appointed by the Director-General of Health to cover specified regions nationally. They are qualified and experienced mental health professionals who hold senior roles within mental health services. There are currently 20 DAMHS covering general and forensic mental health services across the country. DAMHS have powers and responsibilities relating to administration and clinical oversight of the Mental Health Act and patients in their area. They are required to report to the Director of Mental Health quarterly on the use of the Mental Health Act in their area, and other issues involving the functioning of their service and the provision of care.

7. District inspectors of mental health are appointed by the Minister for Mental Health, previously the Minister of Health, for 3-year terms. They are lawyers whose primary function is to protect and safeguard the rights of patients subject to the Mental Health Act. District inspectors are independent from health and disability services and are not patient advocates or legal advisors. They can also investigate and report on complaints regarding breaches of the Mental Health Act, patient rights, and can conduct inquiries. A wider part of this involves monitoring and reporting on service delivery that impacts patients. District inspectors are required to report monthly to the Director of Mental Health on the exercise of their powers, duties, and functions.
8. The Office of the Director of Mental Health and Addiction (ODMHA) reviews the statutory reports and follows up on any issues or concerns as necessary. The ODMHA maintains oversight of service administration and the rights and protection of patients. The ODMHA also provides advice to services and district inspectors on aspects of the Mental Health Act. A report is published by the ODMHA annually regarding the use and functioning of the Mental Health Act.²

Substance Addiction (Compulsory Assessment and Treatment) Act 2017

9. The Substance Addiction (Compulsory Assessment and Treatment) Act 2017 (the SACAT Act) allows for the compulsory treatment of people who have a severe substance addiction, and severely impaired capacity to make decisions about addiction treatment. Compulsory treatment must be assessed as necessary and addiction treatment must be available in order for a person to be made subject to the SACAT Act.
10. Much like the Mental Health Act, the SACAT Act includes statutory roles that monitor the Act's functioning and the treatment patients receive. These are the Director of Addiction Services, the Directors of Area Addiction Services (Area Directors), and district inspectors appointed under the SACAT Act.
11. The Director of Addiction Services is responsible for the general administration of the SACAT Act, under direction from the Minister of Health and the Director-General of Health.
12. Area Directors are appointed by the Director of Addiction Services and have oversight of specified areas nationally. They are qualified and experienced addiction clinicians who hold senior roles within local mental health and addiction services. There are currently 9 Area Directors appointed to 9 specified regions across the country. Area Directors have powers and responsibilities relating to administration and clinical oversight of the SACAT Act and patients in their area. They are required to report to the Director of Addiction Services quarterly on the use of the SACAT Act in their designated region, alongside other key aspects involving the functioning of their addiction service and the provision of care and treatment.

² The most recent 'Office of the Director of Mental Health and Addiction Services Regulatory Report' was published on 25 September 2023, covering 1 July 2021 to 30 June 2022, and can be found on the Ministry of Health's website.

13. District inspectors designated under the SACAT Act are appointed by the Minister of Health or Minister for Mental Health for 3-year terms. Much like their role under the Mental Health Act, and with the same appointment criteria, their primary function is to protect and safeguard the rights of patients subject to the SACAT Act. District inspectors are required to report monthly to the Director of Addiction Services on the exercise of their powers, duties, and functions.
14. The ODMHA reviews all statutory reporting and follows up on any issues or concerns as necessary. The ODMHA works in a regulatory role for the SACAT Act including maintaining oversight of service administration and the rights and protection of patients, alongside acting in an advisory role to services and district inspectors.

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Appendix 2: Detailed information regarding special and restricted patients

Special patients

1. 'Special patient' is a legal status determined when a Court orders that a defendant be detained in a forensic mental health facility for assessment or treatment.
2. A defendant who is charged with an imprisonable offence and is suspected of being mentally impaired can be assessed under the Criminal Procedure (Mentally Impaired Persons) Act 2003 (the Criminal Procedure Act). After an assessment, defendants can be made a special patient if they meet the definition of 'mental disorder' in the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Mental Health Act).
3. The main categories of special patients are people who:
 - a. are found unfit to stand trial because of a mental disorder
 - b. have a finding of 'act proven but not criminally responsible on account of insanity' (a new finding as a result of the Rights for Victims of Insane Offenders Act 2021)
 - c. are not guilty by reason of insanity (as defined in the Crimes Act 1961)
 - d. are found guilty but are ordered by the Court to receive compulsory mental health treatment instead of, or in addition to, a prison sentence
 - e. have been transferred from a Corrections facility (sentenced or on remand) to a forensic mental health facility for treatment.
4. Forensic mental health services provide treatment and rehabilitation for mentally disordered offenders, alleged offenders, or people who pose a high risk of offending. They provide inpatient treatment facilities (such as secure units and step-down rehabilitation units) and community mental health services.
5. When a person is made a special patient after being found not guilty by reason of insanity, the order is for an indefinite period. A person found unfit to stand trial may be detained as a special patient for up to half of the maximum sentence to which they would otherwise be subject to (as determined by the Crimes Act 1961), or until the person becomes fit to stand trial. If the charge is one with a life sentence, the maximum detention period is 10 years.

Restricted patients

6. 'Restricted patient' is a legal status determined when a Court finds that, due to the special difficulties and danger an individual poses to themselves and others, they require detention in a forensic mental health facility for treatment. At this point they have not necessarily been charged with, or convicted of, a crime.
7. The Court makes decisions on whether to order this status based on an application from the Director of Mental Health under the Mental Health Act. These orders last for an indefinite period.

Management of special and restricted patients

8. The legal framework for managing special and restricted patients is set out in the Criminal Procedure Act and the Mental Health Act.
9. Special patients and restricted patients are detained for treatment in one of the 5 Regional Forensic Mental Health Services located in Auckland, Hamilton, Wellington (with a small site in Whanganui also), Christchurch and Dunedin.
10. Special patients and restricted patients are progressively reintegrated into the community by being granted leave from the secure forensic mental health facility. This approach enables both the forensic mental health service and the special patient to work towards planned treatment and recovery goals, while giving due consideration to public safety.
11. Each Forensic Mental Health Service conducts regular Special Patient Review Panels to review the clinical progress of special patients and make recommendations for treatment and rehabilitation. Panels are made up of representatives from a multi-disciplinary team that works with the special patient. There may also be a member external to the service, and whānau are welcome to participate.
12. The Director of Mental Health may grant special patients and restricted patients up to 7 days of leave per week ('short leave'), requiring a return to hospital grounds at least once per week for a review of their condition (section 52 of the Mental Health Act).
13. Once a patient has demonstrated an ability to live safely and adaptively in the community on supervised short leave, the responsible clinician can apply for longer periods of leave in the community, referred to as 'ministerial long leave' (section 50A).
14. Once their responsible clinician is satisfied that the special patient or restricted patient no longer requires management under that legal status, they may also apply for a change of legal status. Appendix 3 shows the rehabilitative pathway for special patients and restricted patients.
15. The Minister for Mental Health is responsible for making decisions on applications for long leave and changes of legal status. These decisions mark an important milestone in an individual's rehabilitation and reintegration into the community. It can take years for a person to reach these milestones, and it is a meaningful occasion for them and their treating team.

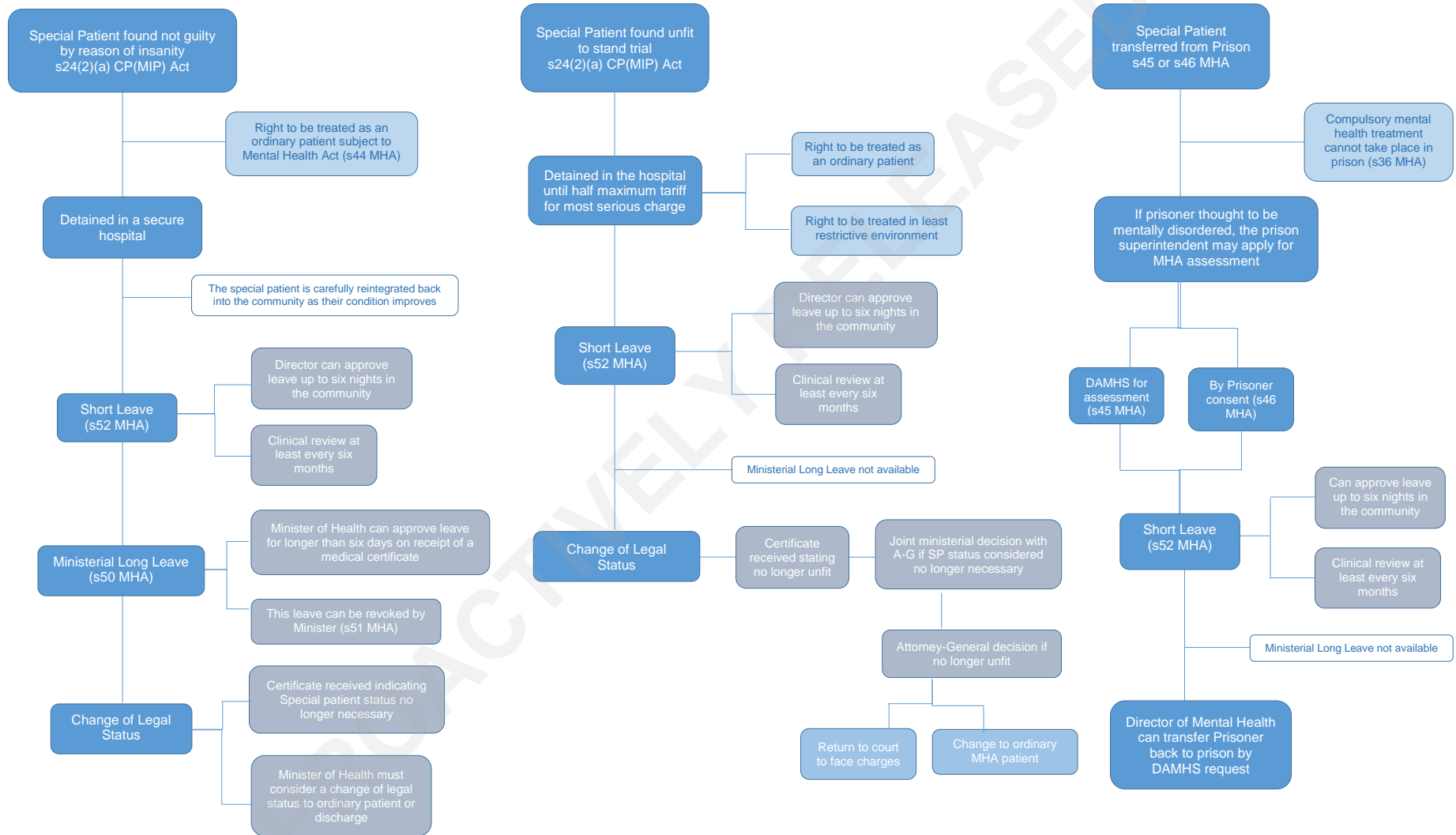
Director of Mental Health

16. The Director of Mental Health has oversight of the management of special and restricted. The Director of Mental Health has specific powers in relation to:
 - a. granting applications for short leave (section 52 of the Mental Health Act)
 - b. approving special patient transfers to another hospital (section 49)
 - c. approving the return of certain special patients to prison, once assured their mental health can be adequately managed in a prison environment (section 47).

17. The Director of Mental Health also considers applications for ministerial long leave and changes of legal status, and provides advice to assist the Minister for Mental Health's decision-making. The Director of Mental Health is assisted by the Deputy Director of Mental Health and a team of advisors.

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Appendix 3: Special patient pathways



Appendix 4: Glossary of terms used in special patient briefings

Criminal Procedure (Mentally Impaired Persons) Act 2003 (the Criminal Procedure Act)

The Criminal Procedure Act when passed was the first significant revision of the law relating to mentally impaired offenders in 50 years.

A defendant who is charged with an imprisonable offence and is suspected of being mentally impaired can be assessed under the Criminal Procedure Act. At the conclusion of such an assessment, the Court may find a defendant unfit to stand trial or acquit a defendant on account of insanity.

The Criminal Procedure Act prescribes orders that the Court can make for the detention, treatment and care of a defendant found unfit to stand trial or acquitted on account of insanity, and for certain mentally impaired defendants who are convicted of an imprisonable offence.

Director of Mental Health

The Director and Deputy Director of Mental Health have certain powers under the Mental Health Act in relation to special patients, including:

- the administration of matters relating to 'special patients', including approval of leave and transfer
- the ability to apply to the Court for a 'restricted patient' order
- the ability to direct that patients be transferred between services
- the ability to instruct a district inspector to inquire into issues relating to the assessment and treatment of patients and proposed patients under the Mental Health Act
- the authority to inspect any aspect of a mental health service.

Directors of Area Mental Health Services (DAMHS)

DAMHS are appointed to areas or regions, formerly DHBs, as well as to the 5 regional forensic mental health services, by the Director-General of Health. The forensic DAMHS have responsibilities in relation to special and restricted patients, including:

- appointing health professionals to be responsible clinicians for each patient undergoing compulsory assessment and treatment
- applying to the Director of Mental Health for the leave and transfer of special patients
- receiving applications for the compulsory assessment of a person detained in a prison
- deciding whether certain special patients are fit to be returned to a prison
- directing the temporary return of certain special patients to hospital
- receiving clinical reviews and Mental Health Review Tribunal (Tribunal) reviews of patients and special patients subject to a compulsory treatment order.

District inspectors

District inspectors are lawyers appointed by the Minister for Mental Health, with responsibilities to:

- make regular visits to hospitals and other services in the district of appointment
- conduct inquiries into any breach of legislation or breach of duty by persons employed in the hospital or service
- monitor patients' rights and investigate any complaints of breaches

- ascertain views and wishes of patients during their course of treatment and assist where appropriate with applications for review by a judge or the Tribunal
- prepare visitation reports for the DAMHS
- provide regular reports to DAMHS on the exercise of the district inspector's responsibilities and monthly reports to the Director of Mental Health.

Forensic mental health services

Regional forensic mental health services are responsible for the management of special patients and restricted patients, within the legislative framework of the Mental Health Act and the Criminal Procedure Act.

New Zealand legislation specifically allows for people who have been charged with or convicted of an offence and who meet the definition of mental disorder in the Mental Health Act to be treated in hospital for that illness. Treating the mental disorder is an important step in assisting an individual to acknowledge and address the reasons for their offending and in this way can reduce the chances of future offending and significantly improve their wellbeing.

In managing special patients, forensic services are required to balance the treatment and rehabilitative needs of the individual with the safety of the public and the concerns of victims.

Index offence

The index offence is the criminal offence that led to charges of which the special patient was found not guilty by reason of insanity.

Medical certificate

A medical certificate is a certificate pursuant to section 50A(1) of the Mental Health Act signed by 2 medical practitioners stating that they have examined a special patient and found that they are fit to be absent from hospital.

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

The Mental Health Act provides the framework for the management of special patients, including provisions for leave and transfer. The main sections of the Mental Health Act relating to the management of special and restricted patients are:

- granting of ministerial long leave (section 50A)
- granting of short leave by the Director of Mental Health (section 52)
- approving the transfer of special patients between facilities (section 49)
- enabling the transfer of prisoners into a forensic mental health facility (sections 45 and 46)
- approving the return of certain special patients to prison (section 47)
- enabling the Court to declare a patient to be a restricted patient (sections 54 to 56).

The key objectives of the Mental Health Act are to:

- define the circumstances in which compulsory assessment and treatment may occur
- ensure that both vulnerable individuals and the public are protected from harm
- identify the rights of patients and proposed patients and ensure those rights are protected
- ensure that assessment and treatment occur in the least restrictive manner consistent with safety
- provide a legal framework consistent with good clinical practice
- promote accountability for actions taken under the Mental Health Act.

A 'patient' under the Mental Health Act, means a person who is:

- required to undergo assessment under section 11 or section 13 of the Mental Health Act; or
- subject to a compulsory treatment order made under Part 2 of the Mental Health Act; or
- a special patient.

Mental Health Review Tribunal

The Minister for Mental Health, previously the Minister of Health, appoints members of the Tribunal pursuant to section 101 of the Mental Health Act. One member must be a lawyer, one a psychiatrist, and the other a community member.

Key functions of the Tribunal in relation to special and restricted patients are:

- reviewing the condition of special patients found not guilty by reason of insanity, and reaching an opinion as to whether 'the patient's condition still requires, either in the patient's own interest or for the safety of the public, that he or she should be subject to the order of detention as a special patient' (section 80)
- reviewing the condition of special patients found unfit to stand trial, and reaching an opinion as to fitness to stand trial, and whether they still require special patient status (section 80)
- reviewing the condition of patients who are subject to 'restricted patient' orders and reaching an opinion as to whether the patient is fit to be released from restricted patient status (section 81)
- investigating complaints, including in relation to special and restricted patients (section 75).

Mental state

Mental state is, in clinical psychology and psychiatry, an indication of a person's mental health, as determined by a mental status examination.

Psychosis

Psychosis occurs when a person loses contact with reality. The person may:

- have false beliefs about what is taking place, or who they are (delusions)
- see or hear things that are not there (hallucinations).

Registered victims

Victims of crimes can apply to New Zealand Police to become a registered victim. Police then assess whether a victim is eligible to receive notifications, based on the legal status of the offender and the type of offence. A victim may choose not to become a registered victim. Registered victims receive notifications for certain events in relation to a special patient, and are invited to provide a submission in the consideration of long leave or a change of legal status.

Responsible clinicians

Key responsibilities of responsible clinicians include:

- determining whether or not a person is mentally disordered
- making applications to the Court for compulsory treatment orders (CTOs)
- overall management of the patient's treatment
- regular clinical reviews of persons subject to CTOs and of special patients and restricted patients
- ensuring consultation with the family or whānau of the patient or proposed patient unless there are reasonable grounds not to do so.

Restricted patients

Restricted patients are compulsory mental health patients that present special difficulties because of the danger they pose to themselves and others. The Court makes decisions about restricted patient status based on an application from the Director of Mental Health under the Mental Health Act. At this point they have not necessarily been charged with, or convicted of, a crime. Restricted patient status is rare, with only 8 people given this status since 1992. Restricted patients have the same access to leave and change of legal status as special patients.

Revoking ministerial long leave

Section 51 of the Mental Health Act permits the forensic DAMHS to direct that a patient on long leave be admitted or readmitted to hospital if it is necessary 'in the interests of the safety of that patient or the public'.

Such an admission can only be for 72 hours, during which time the Director of Mental Health will provide a briefing to the Minister for Mental Health recommending revocation of leave.

Special patients

Special patient is a legal status received when the Court orders that a defendant be detained in a forensic mental health facility for treatment. Defendants can be made a special patient when they meet certain criteria in terms of a mental disorder.

The main categories of special patients are:

- unfit to stand trial because of a mental disorder
- found not guilty by reason of insanity (as defined in the Crimes Act 1961)
- found guilty but the Court orders compulsory mental health treatment instead of, or as well as, a prison sentence.

Another category of special patient is where people in prison (sentenced or on remand) are transferred under the Mental Health Act to a forensic mental health facility for treatment. The person is transferred back to the Corrections facility when their responsible clinician considers their mental health can be adequately managed in prison.

When a person is made a special patient after being found not guilty by reason of insanity, the order is for an indefinite period. A person found unfit to stand trial may be detained subject to a special patient order for up to half of the maximum sentence to which they would otherwise be subject, up to a maximum of 10 years, or until the person becomes fit to stand trial.

Special Patient Review Panel (SPRP)

Each forensic mental health service conducts regular SPRPs to review the clinical progress of special patients. The Panels are made up of representatives from a multi-disciplinary team that works with the special patient (eg, psychiatrists, nurses, social workers), and may have a member external to the service.

The special patient appears before the panel with support people (such as family and whānau) for a discussion about their progress in the preceding period. The SPRP will then make comments and recommendations for the patient's treatment and management plan, including recommendations about leave and change of status.

The SPRP's recommendations serve as a second multi-disciplinary team opinion in relation to ministerial leave or change of legal status decisions, and are referenced in the briefings to the Minister of Health.

Treating team

The treating team is a multi-disciplinary team that works with the special patient. Treating teams may include psychiatrists, nurses, social workers, cultural support workers, kaumātua, addiction practitioners, and peer support workers.

PROACTIVELY RELEASED

Minister's Notes

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