

**GUIDELINES FOR THE ROLE AND
FUNCTION OF DULY AUTHORISED
OFFICERS UNDER THE MENTAL HEALTH
(COMPULSORY ASSESSMENT AND
TREATMENT) ACT 1992**

1 April 2000

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While every care has been taken in the preparation of the information in this document, users are reminded that the Ministry of Health cannot accept any legal liability for any errors or omissions or damages resulting from reliance on the information contained in this document.

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

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FOREWORD

Section 130(a) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Act) states that the Director-General of Health may from time to time issue guidelines for the purposes of the Act. The following guidelines are intended to provide users of the Act with some guidance on issues of its interpretation and practical application as to the role and function of Duly Authorised Officers (DAOs).

The need for guidelines to the Act was identified by the Law Commission's report on *Community Safety: Mental Health and Criminal Justice Issues* (1994) and the *Inquiry under Section 47 of the Health and Disability Services Act 1993 in Respect of Certain Mental Health Services 1996* (the Mason Report; Ministry of Health 1996). Both reports stated that workable guidelines were required to address different understandings of the Act.

On 6 October 1999 Parliament passed the Mental Health (Compulsory Assessment and Treatment) Amendment Act 1999 (1999 Amendment), which came into force on 1 April 2000. These guidelines reflect the amendments made to the Act in 1999, and supersede the guidelines issued in 1995.

For general guidance on the use of the Act please refer to the *Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992* (Ministry of Health April 2000). For other more specific information regarding the use of urgent sedation under sections 110 and 110A of the Act, the role of District Inspectors, the roles and functions of Directors of Area Mental Health Services (DAMHSs), the following Ministry of Health guidelines should be consulted:

- *Guidelines for Medical Practitioners Using Sections 110 and 110A of the Mental Health (Compulsory Assessment and Treatment) Act 1992* (April 2000)
- *Guidelines for District Inspectors Appointed under the Mental Health (Compulsory Assessment and Treatment) Act 1992* (April 2000)
- *Guidelines for the Role and Function of Directors of Area Mental Health Services* (April 2000).

These guidelines are in force from 1 April 2000. On 1 July 2000, after a period of three months, the Ministry of Health will seek written submissions on errors, omissions, and points requiring clarification in these guidelines. The submission period will be for six weeks, therefore submissions will close on 14 August 2000. Should you wish to make written submissions before 1 July, please do so.

Submissions should be sent to:

Dr Janice Wilson
 Director of Mental Health
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The guidelines will be revised accordingly and will be distributed by the end of December 2000.

Karen O Poutasi (Dr)
Director-General of Health

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1. INTRODUCTION

1.1 The intent of the Mental Health (Compulsory Assessment and Treatment) Act 1992

The Act replaced the Mental Health Act 1969 and was established:

to redefine the circumstances in which and the conditions under which persons may be subjected to compulsory psychiatric assessment and treatment, to define the rights of such persons and to provide better protection for those rights, and generally to reform and consolidate the law relating to the assessment and treatment of persons suffering from mental disorder.¹

The major changes in emphasis contained in the 1992 Act were:

- better definition of mental disorder
- it dealt only with compulsory assessment and treatment
- it focused on the need for treatment, not on the need for containment
- treatment to be provided in the least restrictive environment possible
- it clarified the rights of those receiving compulsory treatment
- the importance of cultural identity and beliefs
- a means to enable people to receive compulsory treatment in the community
- procedures for the review and appeal of decisions as well as processes to address any breaches of rights.

The Act endeavoured to balance the interests of the person with a mental disorder against society's wider interests, while providing sufficient 'checks and balances' to protect a person's civil liberties.

The Act is generally considered to function effectively, but some amendments were needed to assist its smooth functioning and provide clarity for interpretation. The 1999 Amendment is intended to remove a number of these difficulties that emerged with the operation of the Act. The key changes are:

- clarification of the powers for compulsory assessment and treatment of proposed patients
- requirement of medical practitioners to consult family/whānau as part of the assessment and treatment process
- clarification of the powers of officials to use necessary force
- clarification of the use of emergency sedation
- improved flexibility in relation to the appointment, functioning, and removal of DAMHSs

¹ Mental Health (Compulsory Assessment and Treatment) Act 1992, Long Title, p 3.

- extension of civil immunity provisions to include District Inspectors and members of the Mental Health Review Tribunals
- clarification of procedural matters relating to Mental Health Review Tribunals.

A related amendment has been made to the Victims of Offences Act 1987 to provide victims with the right of notification of the release/escape of offenders/alleged offenders detained in mental health services.

2. DULY AUTHORISED OFFICERS

2.1 Appointment of Duly Authorised Officers

Duly Authorised Officers (DAOs) are appointed by Directors of Area Mental Health Services (DAMHSs). The Act specifies that the individuals appointed as DAOs should be competent and appropriately trained health professionals. All DAOs should be provided with an identifying document (ID card) by the Hospital or Health Service (HHS). The DAO role is an extension of the clinical duties of mental health professionals, as outlined in their job descriptions and evident in their day-to-day activities.

2.2 Role of Duly Authorised Officers

DAOs are the front-line operators of the Act. They are the specialist mental health professionals who the public are most likely to have first contact with, and consequently DAOs may need to provide information and advice on a very wide range of mental health concerns.

The DAO's role is to provide expert information and advice on the mental health needs and services that may be required by people who are experiencing mental health difficulties and, where appropriate, to facilitate the assessment of a person or proposed patient. The Act stipulates what DAOs must do when carrying out their duties. It also outlines provisions that give DAOs discretionary power. For example, under section 38 of the Act, when a DAO is requested to assist, he or she *must* be satisfied that the concern expressed is valid and that there are reasonable grounds for believing that the person may be mentally disordered (section 38(2)(a)).

Once satisfied as to the validity of the request, a DAO has the discretion to arrange for the person to be examined by a medical practitioner and to assist anyone to apply for an assessment of a person who may be mentally disordered. Alternatively, a DAO may make the application himself or herself under section 8 of the Act. Once these steps are taken, he or she should arrange for an assessment examination by a medical practitioner in accordance with section 9 of the Act (section 38(3)(c)).

If a DAO is not satisfied that a person is mentally disordered, he or she can refuse to take any further steps. Similarly, section 40(2) of the Act provides a DAO with the

option of transporting patients to or returning patients from assessment or treatment, but this is not a mandatory responsibility.

Although the role is prescribed by the Act, it is important to emphasise that the DAO does not work in isolation from a multidisciplinary team. There should be clear performance links with key members of the team and a well-maintained relationship with DAMHSs.

3. LEGISLATIVE REQUIREMENTS OF THE MENTAL HEALTH (COMPULSORY ASSESSMENT AND TREATMENT) ACT 1992 THAT CONCERN DULY AUTHORISED OFFICERS

3.1 Clarification of powers for compulsory assessment and treatment of proposed patients (section 2A)

Proposed patient status begins at section 8(3) of the Act with the issuing of a medical certificate by a medical practitioner and ends when a psychiatrist decides that a proposed patient is either mentally disordered (ie, a section 11 certificate is issued) or that the proposed patient is not disordered and is therefore fit to be released or discharged. Proposed patients are accorded all the rights enjoyed by patients under the Act except the right to receive and send letters and postal articles (sections 73 and 74 of the Act). This exception exists because the assessment period is so short that sending or receiving mail is not a realistic possibility.

3.2 Powers to be exercised with proper respect for cultural identity and personal beliefs (section 5)

All persons, courts, and tribunals exercising authority under the Act, must do so with proper recognition and consideration of the importance of the proposed patient's or patient's family/whānau.

During assessment, the patient or proposed patient's family/whānau should be encouraged to provide information about the patient, both in terms of the individual's history and feedback on any changes in the patient or proposed patient that family/whānau may have noticed.

A DAO should balance his or her responsibilities under section 5 of the Act with the need to ensure that the overall goal of proper care for a person is not unnecessarily hindered.

For more general information and guidance on how mental health service providers can involve families/whānau in the care, assessment, and treatment of proposed patients or patients, see:

- the *Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992* (Ministry of Health 2000)

- *Draft Guidelines for Involving Families of Mental Health Consumers in Care, Assessment, and Treatment Processes* (Royal Australian and New Zealand College of Psychiatrists in press).

3.3 Interpreters to be provided (section 6)

Section 6(2) of the Act requires a court, tribunal, or person exercising any power under the Act to ensure that an interpreter is provided for a person, if practicable, if the first or preferred language of the person is a language other than English. First or preferred languages may include but are not limited to Maori and New Zealand Sign Language.

For more general information and guidance on how mental health service providers should provide interpreters for proposed patients or patients, refer to the *Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992* (Ministry of Health 2000).

3.4 Applications for assessment (sections 8 and 8A) and the section 8B medical certificate

Amendments to the Act have clarified how applications for assessment are to be made. Note that a section 8A application is not 'made' (completed) until the written application for assessment (section 8 of the Act) and the medical certificate (section 8B of the Act) have been received by a DAMHS. Together the applicant's section 8 application and the section 8B medical certificate comprise the section 8A application, which is the application received by the DAMHS. However, in practice the section 8A application (which includes the section 8 application form) is received by the DAO, rather than the DAMHS.

Under urgent circumstances (section 38(4)(d)(i)) if there are reasonable grounds for believing a person may be mentally disordered, a DAO can request police assistance to take that person to a medical practitioner for the purposes of an examination under section 8B of the Act.

Once an application is made, a DAO can request police assistance under section 41 of the Act to take a proposed patient to a nominated place for the purpose of an examination under section 9 of the Act.

3.5 Assistance when a person may need assessment (section 38)

Section 38 of the Act allows *anyone* who has concerns about a person's mental health to request the assistance of a DAO. Section 38 also describes the steps that a DAO must take to investigate the validity of the request.

A DAO who receives a request for assistance must investigate the matter to the extent that it is necessary to satisfy himself or herself 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 mentally disordered.

In determining if there are reasonable grounds for believing that the person may be suffering from a mental disorder, a DAO should consider the following:

- why the person has requested a DAO's assistance
- whether or not the person has been a mental health service consumer at any time
- any past records relating to the person
- 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 general practitioner, the police or the local accident and emergency service.

If the DAO decides that the person should be assessed but that the situation is not urgent, section 38(3) of the Act requires a DAO to arrange (or assist in arranging) a medical examination (section 8B of the Act) for the person. If applicable, he or she should also arrange an assessment examination to take place under section 9 of the Act.

If the circumstances are urgent, section 38(4) of the Act requires a DAO to ensure that a medical examination (section 8B(4)(b)) takes place and arrange for an examination under section 9 of the Act.

It is preferable that a DAO arranges for a medical practitioner to come to the person for the purposes of the medical examination (sections 38(4)(a) and (b)). However, if a medical practitioner is not available and the person refuses to go willingly to a medical practitioner, a DAO can take all reasonable steps to take the person to a medical practitioner and ensure that a medical practitioner is able to examine the person. This may include requesting police assistance under section 41 of the Act (section 38(4)(d)).

When responding to and investigating a request under section 38 of the Act, a DAO should be aware that the Code of Health and Disability Services Consumers' Rights 1996 (the Code of Rights) applies. Therefore, it is important that a DAO informs the person who is the subject of the request of his or her rights under the Code of Rights before proceeding with the steps outlined in section 38 of the Act. Once the person becomes a proposed patient (ie, the application and certificate under sections 8A and 8B of the Act are completed), the rights set out in the Act (sections 64 to 72, and 75 of the Act) also apply. A DAO will then need to inform the proposed patient of his or her rights under the Act.

3.6 Assistance in taking or returning a proposed patient or patient to a place of assessment or treatment (section 40)

Under section 40 of the Act, a DAO may take all reasonable steps to take a patient or proposed patient to a place he or she is required to attend or to return a patient to hospital.

The section also applies to:

- every patient or proposed patient who is refusing to attend at any place required for:
 - an assessment examination under section 9 of the Act
 - an assessment in accordance with sections 11 or 13 of the Act
 - an examination by a Judge under section 18 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.

3.7 Police assistance (section 41)

Section 41 of the Act provides for:

- a DAO to seek police assistance when attempting to do anything specified in section 38(4)(b) or (d) or section 40 (2) of the Act
- the responsibilities of a member of the police if called to assist a DAO.

Under section 41 of the Act, a member of the police:

- can enter the premises where the patient or proposed patient is
- must identify himself or herself with a badge or other evidence if not in uniform
- may not detain a patient or proposed patient for the purposes of section 38(4)(b) or sections 40(1)(a) or (b) of the Act for any period of time longer than that which is the shorter of **six hours** and the time it takes to conduct the medical examination or review
- may take the patient or proposed patient back to hospital for the purposes of section 40 of the Act

- may not enter any premises under section 41(2) of the Act without a warrant, if it is reasonably practicable to obtain a warrant. A warrant can be obtained by applying to a District Court Judge or Registrar.²

3.8 Powers of a medical practitioner when an urgent examination is required (section 110)

Under section 110 of the Act, a medical practitioner may request police assistance to conduct a medical examination (section 8B of the Act). A medical practitioner acting under this section must make every reasonable effort to obtain the advice and assistance of a DAO.

3.9 Powers of a medical practitioner who issues a certificate to sedate when sedation is urgently required (section 110A)

Section 110A of the Act allows a medical practitioner who issues the section 8B medical certificate to administer sedation to a proposed patient in an emergency.

The medical practitioner must have reasonable grounds for believing that the proposed patient presents a significant danger to himself or herself or to others and that it is in the proposed patient's best interests to receive a sedative drug urgently.

The medical practitioner must administer the drug in accordance with the *Guidelines for Medical Practitioners Using Sections 110 and 110A of the Mental Health (Compulsory Assessment and Treatment) Act 1992* (Ministry of Health 2000) issued by the Director-General of Health under section 130 of the Act.

The medical practitioner must make every reasonable effort to obtain the advice and assistance of a DAO and may call for police assistance (section 110A(4)). Where a medical practitioner administers a sedative drug, he or she 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 consultant psychiatrist conducting the assessment examination for the purpose of section 9 of the Act. This may mean that a DAO should take a copy and ensure it is transported with the proposed patient.

3.10 Powers of a medical practitioner when urgent assessment is required (section 110B)

This section relates to an urgent assessment examination under section 9 of the Act. The medical practitioner (usually a psychiatrist) must conduct the examination as soon as possible. The medical practitioner must make every reasonable effort to seek the advice and assistance of a DAO, and may seek police assistance (section 110B(3)).

² Using Form 10 prescribed by the Mental Health (Forms) Amendment Regulations 2000. These forms have been supplied to the police and to DAMHSs.

3.11 Powers of police when urgent assessment is required (section 110C)

Section 110C of the Act sets out the powers of the police when urgent assistance is required by a medical practitioner. Police can be called to assist a medical practitioner under sections 110, 110A or 110B of the Act.

3.12 A nurse's power to detain (section 111)

Section 111(2)(a) of the Act allows a nurse to detain, for the purpose of an assessment examination, a person who has been admitted to hospital (or who has been brought to a hospital) who is believed to be mentally disordered. Powers of detention are set out in section 113 of the Act. This detention cannot be for more than six hours from the time the nurse first calls for a medical practitioner to examine the person (section 111(3)). It should be noted that the power to detain is not limited to the premises of a psychiatric unit (ie, this power may need be exercised in a general medical ward) and should be exercised with discretion, according to good clinical practice.

Section 111 of the Act is intended for use only in an emergency when a medical practitioner is not available. For example, if an informal patient attempts to leave the acute unit, a medical practitioner is not available and the registered nurse should believe that the patient may be a serious danger to the health or safety of himself/herself or others, then that informal patient can be placed under the assessment process in the same way as any other person.

3.13 Use of force (section 122B)

Section 122B of the Act authorises a person who is exercising a specified power in an emergency to use such force as is reasonably necessary to:

- take and retake
- detain
- enter premises.

Force as is reasonably necessary in the circumstances may also be used under section 122B(3) at any time for the purposes of treatment. Before force is used it is strongly recommended that the use of de-escalation skills should always be considered, and if clinically appropriate used. When force is used, a log recording the exact circumstance must be completed. A log for this purpose should include:

- the date, time, and place that force was used
- why force was required
- what type of force was applied and by whom

- any injury to patients or staff members involved
- any action or follow-up required as a result of force being used.

This log must be forwarded to the DAMHS as soon as practicable. Where any use of force is authorised, any person using force is criminally responsible for any excess (see section 62 of the Crimes Act 1961).

Services should refer to the Memorandum of Understanding dated 23/3/2000 between the New Zealand Police and the Ministry of Health (see pages 22 – 25), which provides guidance to police staff and health professionals administering the provisions of the Act.

4. OTHER RELEVANT SECTIONS OF THE MENTAL HEALTH (COMPULSORY ASSESSMENT AND TREATMENT) ACT 1992

The following list is offered as an indicative rather than an exhaustive reference source. There are certain sections of the Act that DAOs will need to know in their entirety to be able to provide adequate information to those requiring assessment and treatment under the Act. For example, DAOs will need to understand the details of the compulsory assessment and treatment requirements contained in sections 11 to 28 of the Act in order to answer specific questions.

Section 2	Definition of DAO
Section 4	General rules relating to liability to assessment or treatment
Section 8	Applications for compulsory assessment
Section 9	Compulsory assessment examination to be arranged and conducted
Section 31	Leave for inpatients
Section 37	Advice and assistance of a general nature
Section 39	Assistance in respect of outpatients and inpatients on leave
Section 45	Applications for assessment of persons detained in penal institutions
Section 50	Transport of special patients whose leave is cancelled
Section 51	Temporary return to hospital of special patients
Section 53	Escape and absence without leave of special patients
Section 57	Limitations on compulsory treatment
Section 63	Withdrawal of consent for compulsory treatment
Section 64	General rights of patients to information
Section 65	Rights of patients' to respect for cultural identity
Section 66	Rights of patients to treatment
Section 67	Rights of patients to be informed about treatment
Section 68	Further rights of patients in case of audio and visual recording
Section 69	Rights of patients to independent psychiatric advice
Section 70	Rights of patients to legal advice
Section 71	Rights of patients to company and seclusion
Section 72	Rights of patients to receive visitors and make telephone calls

Section 73	Rights of patients to receive letters and postal articles
Section 74	Rights of patients to send letters and postal articles
Section 75	Rights of patients to complain of breach of rights
Section 109	Police apprehension of persons appearing to be mentally disordered in a public place
Section 112	Judge's authorisation to apprehend patients or proposed patients
Section 118	False or misleading certificates
Section 119	Further offences involving false or misleading documents, etc
Section 122	Matters of justification or excuse (especially section 122(4), the provisions of the Crimes Act 1961).

5. DULY AUTHORISED OFFICER APPOINTMENT CRITERIA

The preceding sections have indicated the role DAOs are expected to fulfil. In summary, a DAO must be an appropriately trained and competent mental health professional who can act as the community's advisor and provider of practical assistance when dealing with people with a mental disorder.

This description can be viewed as comprising three broad categories of requirements:

- knowledge
- skills
- attitude.

Any process for assessing the potential of mental health professionals to be appointed as DAOs must ensure that there are adequate means to measure their suitability against these requirements.

5.1 Knowledge

The DAO must have sufficient training and clinical experience to demonstrate competence in dealing with:

- the assessment of mental disorder, especially from a bio-psycho-social perspective
- issues of cultural difference. The DAO must be able to demonstrate an awareness of the principles of the Treaty of Waitangi, the implications of partnership, and sensitivity to cultural identity and personal beliefs.
- knowledge of a Māori concept of mental health and the cultural factors that impact on understanding of, for example, hallucinations and death

- the treatment and management of mental disorder
- the use of and side effects from psychotropic medication. Competence must be demonstrated to a reasonable level.
- the management of aggression and violence requiring the maintenance of safety (ie, de-escalation techniques, calming and restraint techniques, and especially skills in break-away techniques)
- known population groups vulnerable to self-endangering behaviours (eg, young males experiencing relationship difficulties)
- requests for information on the range of mental health services and other resources available
- all relevant sections of the Act
 - the intent and meaning of sections and the specific paperwork required by each part of the Act
 - limitations to powers
 - access to supports
 - interactions with other roles designated in the Act (especially DAMHSs and responsible clinicians)
 - expectations for professional conduct and responsibilities
 - interfaces with the legislation listed below.

The DAO must have an understanding of the sections of the following legislation that impact on DAO tasks:

Privacy Act 1993

Health Information Privacy Code 1994

Protection of Personal and Property Rights Act 1988

- section 18: Powers and duties of welfare guardians

New Zealand Bill of Rights Act 1990

- section 3: Application
- section 4: Other enactments not affected
- section 5: Justified limitations
- section 6: Interpretation consistent with Bill of Rights preferred
- section 9: Right not to be subjected to torture or cruel treatment
- section 11: Right to refuse to undergo medical treatment
- section 13: Freedom of thought, conscience and religion
- section 14: Freedom of expression
- section 18: Freedom of movement
- section 21: Unreasonable search and seizure

- section 22: Liberty of the person
- section 23: Rights of persons arrested or detained
- section 27: Right to justice

Criminal Justice Act 1985

- section 75: Sentence of preventive detention
- section 80: Minimum periods of imprisonment
- section 95: Release of offenders detained in psychiatric institutions while subject to sentence of imprisonment
- Part VII: Mentally disordered persons
- section 140: Court may prohibit publication of reports
- section 161: Mentally disordered persons

Children, Young Persons and their Families Act 1989

- section 2: Interpretation

Crimes Act 1961

- section 23: Insanity
- section 26: Execution of sentence, process or warrant
- section 31: Arrest by constable pursuant to statutory process
- section 34: Persons assisting constable or officer in arrest
- section 39: Force used in executing process or in arrest
- section 40: Preventing escape or rescue
- section 41: Preventing suicide or certain offences
- section 62: Excess use of force
- section 120: Escape from lawful custody
- section 155: Duty of persons doing dangerous acts

Guardianship Act 1968

- section 9: Wards of the Court
- section 25: Consents to operations

Health and Disability Commissioner Act 1994

Code of Health and Disability Services Consumers' Rights 1996

Hospitals Act 1957

- Part V: Private hospitals

Land Transport Act 1998

- section 19: Licenses of certain persons subject the Mental Health (Compulsory Assessment and Treatment) Act 1992 to be suspended

Police Act 1958

- section 53: Failing to give assistance

Memorandum of Understanding between the New Zealand Police and the Ministry of Health dated 23/3/2000 and the local agreements that flow from this.

This list is not intended to be exhaustive, but to provide an indication for those designing training programmes etc. Legal opinions should always be sought when interpretations are required.

5.2 Skills

The mix of skills that will need to be demonstrated by DAOs are:

- knowledge of mental disorder
- an ability to use a mental status examination
- clinical skills in:
 - engagement
 - interpersonal skills
 - behaviour management
 - problem solving
 - crisis management and crisis de-escalation
- good written and oral presentation skills
- the ability to work in a multidisciplinary team
- familiarity with calming and restraint, including working in co-operation with the police and use of break-away techniques
- the ability to liaise with community agencies and work with them in a co-operative manner including: iwi; marae committees, Pacific communities; and church groups
- the ability to deal appropriately with members of the public
- the ability to educate other agencies and the public on the Act

- the ability to make decisions and act independently
- ability to use supervision, peer reviews, and debriefing procedures for both clinical matters and in the use of the Act
- the initiative to seek specific and specialist advice when appropriate.

A DAO needs to acknowledge that the client's contact with mental health services is only one part of the client's experience. The need to maintain a holistic approach to the interventions mental health services offer is of paramount importance and will be testament to the practitioner's acceptance of the intent of the Act.

5.3 Attitude

Knowledge and skill by themselves are no guarantee of the successful implementation of the Act. The key aspect that will tie together content and process is undoubtedly the attitude that mental health professionals bring to their duties. Specifically the attitudes that should be demonstrably evident are:

- a strong client focus
- sensitivity to other people, their experience and their context
- a focus on empowering people
- cultural awareness and cultural safety
- a professionally based attitude to mental health care
- sensitivity when working with advocates and interpreters, as well as an ability to enable people to gain access to such supports (see *Let's Talk: Guidelines for Government Agencies Hiring Interpreters* (Department of Internal Affairs, 1995))
- respect for privacy and confidentiality
- respect for the intent of the Act.

6. EMPLOYERS' OBLIGATIONS

The extensive and demanding task that DAOs carry out is only possible with the active support of their employers and the DAMHS to whom DAOs are accountable. The main responsibility that lies with employers is the need to ensure that only competent staff are employed as DAOs.

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

- where possible sufficient staff to provide a 24-hour service and ensure that DAOs have support available when it is required. A range of staff should be available to allow the matching of the cultural/ethnic background of the client with that of the DAO. Therefore, recruitment policies will need to target appropriate employees.
- 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 medical practitioners required for certifications, after hours support, and advice, etc
- 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.

7. SELECTING DULY AUTHORISED OFFICERS

When selecting DAOs for appointment, the worker's match with the tasks should be considered, thereby identifying any training gaps. The selection process must accommodate the requirements of the Act and include the participation of both employers and DAMHSs. There will be some situations that will not easily fit this process, such as when a DAO is not an employee of a Hospital and Health Service (HHS) 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. DAMHSs should be actively involved in this process.

Where staff are being interviewed for positions that currently involve DAO duties, it is essential that the DAMHS or their delegate is involved. There should be an agreement between the DAMHS and the employer on the interview process to be used. This will enable a structure that evaluates competence for potential DAO appointments and meet 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. This will require a degree of goodwill in situations where the DAMHS and employer are with different HHSs.

In establishing a process that covers the selection, training, and appointment of DAOs the following issues will require consideration.

Pre-appointment:

- the means to make initial recommendations and selections of potential DAOs
- identification of initial training needs
- provision of initial training packages, which include detailed information on the Act
- a training package that includes case studies, role plays, and mentoring
- a formal assessment prior to appointment.

Post-appointment:

- provision of appropriate identification
- ongoing training and regular competency reviews
- a defined term of appointment (eg, annual), renewable only after a competency assessment.

8. OTHER ISSUES

There are some issues which have the potential to make the performance of DAO duties difficult. Such issues include:

- perceived conflicts in the roles of a key worker/care co-ordinator and a DAO. Mental health professionals with more than one role may arouse questions about the client's trust in the worker if he or she is involved in enabling compulsory assessments.
- work priorities. For example the allocation of DAOs to other generic mental health duties or specialist work, such as inpatient care.
- work expectations. For example, duties expected of mental health professionals who have been working rostered DAO shifts, especially out of normal working hours.

These issues and potential conflicts need local, negotiated solutions to be agreed in advance. There will be different issues and solutions in different parts of the country, due to variations in resources and geography.

**MEMORANDUM OF UNDERSTANDING DATED 23/3/2000 BETWEEN THE
NEW ZEALAND POLICE AND THE MINISTRY OF HEALTH**

BETWEEN

THE NEW ZEALAND POLICE
(hereinafter referred to as "the Police")

AND

THE MINISTRY OF HEALTH
(hereinafter referred to as "the Ministry")

RECITAL

IN recognising that the Police and the Ministry have separate missions and standards,

AND acknowledging that each party brings to its respective tasks valuable expertise and resources,

AND acknowledging full co-operation between both parties at all levels as essential to ensure the co-ordinated, effective and efficient delivery of services to meet the needs of individuals who may require compulsory assessment and treatment under the Mental Health (Compulsory Assessment and Treatment Act) 1992:

BOTH PARTIES DECLARE AND AGREE TO THE FOLLOWING

1 INTRODUCTION

- 1.1 The following matters are agreed in principle between the Police and the Ministry of Health to give guidance to police staff and health professionals administering the provisions of the Mental Health (Compulsory Assessment and Treatment) Act, 1992, (hereinafter referred to as 'the Act').
- 1.2 This memorandum should form the basis of local agreements made at police region and district level with Mental Health Services.
- 1.3 A spirit of co-operation should prevail in all dealings under the Act between police and health professionals.
- 1.4 People being dealt with under the Act are **PATIENTS** or proposed patients and shall be treated with humanity and respect for the inherent dignity of the person. The responsibility for the provision of services under the Act to mentally disordered persons rests primarily with health services. It is further recognised that such persons, while being

dealt with purely under the Act, have not necessarily broken any rule of law.

- 1.5 Police and health professionals must retain a flexible approach to any incident being dealt with under the Act and must be prepared at all times to change their course of action.
- 1.6 Nothing in this Memorandum limits or prevents the Police from carrying out any duties or exercising any powers under other enactments.

2 RESPONSIBILITIES

- 2.1 The Duly Authorised Officer is the official in charge at any incident that requires the invoking of the Act and a combined Police/Mental Health Services response. In the absence of a Duly Authorised Officer if sections 110, 110A, 110B, or 110C are being invoked the Registered Medical Practitioner is the official in charge.
- 2.2 The police may be called upon to assist the health professionals but will continually review the appropriateness of the action requested of them. The police will advise the health professionals if the actions requested of them are outside their powers or immediate ability.
- 2.3 Duly Authorised Officer should only request police assistance when the particular powers and specific expertise of the police are required.

3 TRANSPORTATION OF PATIENTS

- 3.1 Duly Authorised Officers have the responsibility for arranging for the transportation of patients, proposed patients, and patients absent without leave. Mental Health Services are responsible for ensuring that Duly Authorised Officers are adequately resourced to carry out this duty.
- 3.2 When the particular powers and specific expertise of the police are required to assist with transportation, the decision as to the type of vehicle to be used should be made by the Duly Authorised Officer or Registered Medical Practitioner in charge in consultation with attending police.
- 3.3 Matters to be taken into account in making that decision include:
 - the clinical condition of the patient or proposed patient
 - whether urgent sedation has been administered to the proposed patient or patient
 - the potential or actual violence of the patient or proposed patient
 - the types of vehicle available
 - the need for restraint and the type of restraint required

- the personnel available
- the distance to be travelled

3.4 Where police have been called to assist a Duly Authorised Officer or Registered Medical Practitioner, the duly authorised officer **OR** a suitable health professional will at all times PHYSICALLY accompany and monitor the patient or proposed patient. The definition of ‘suitable health professional’ should be negotiated at a local level and be contained in local memoranda of understanding.

4 USE OF FORCE

4.1 Section 122B of the Act allows the use of force in certain circumstances. Anyone who is exercising a power under the Act should be certain that these circumstances apply before using force.

4.2 Any taking, retaking or detention by force must only be in circumstances where it is likely the patient or proposed patient will be a danger to him or herself, or to others or will be likely to cause serious property damage.

4.3 Before using force the wishes of the patient or proposed patient and their caregivers should be sought wherever practicably possible and careful consideration should be given to their views. Every effort must be made to reduce the risk of violence before the patient is transported.

4.4 If it is necessary to use force to take and/or detain a patient or proposed patient the Duly Authorised Officer or Registered Medical Practitioner shall give a clear request to police to do so.

4.5 If it is necessary to use force to gain entry to property in an emergency the Duly Authorised Officer or Registered Medical Practitioner shall give a clear request to police to do so. Police officers must be certain of the section of the Act they are acting under that authorises the entry. Where it is reasonably practicable to get a warrant, the Police must comply with section 41(7). In determining whether it is reasonably practicable to apply for a warrant, Police should consult with the Duly Authorised Officer or Registered Medical Practitioner. The appropriate Mental Health Service should usually assume responsibility for making good any damage caused by such action.

5 CHARGING FOR SERVICES

5.1 The Police and the respective Mental Health Services will not normally charge each other for the provision of assistance under the Act.

- 5.2 Consideration may be given to charging for pre-planned use of Police services by Hospitals and Health Services where it has been contractually agreed to at a local level or in instances of excessive and unreasonable demands on police time.

6 AMENDMENT VARIATION

- 6.1 The parties agree that these understandings may be amended or varied by mutual agreement between partners. Such variations should be raised and addressed through the National Manager of Operations for the Police and the Deputy Director of Mental Health for the Ministry of Health.

Signed by:

On behalf of the New Zealand Police

Signed by:

On behalf of the Ministry of Health