

Guidelines for the Role and Function of District Inspectors

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

Disclaimer

These guidelines aim to provide guidance to District Inspectors on the exercise of their powers, duties and functions under the Mental Health (Compulsory Assessment and Treatment) Act 1992. They are not intended as a substitute for informed legal advice.

If District Inspectors have concerns about the legality of their actions they should seek guidance from the senior advisory District Inspector, and if doubt remains seek formal legal advice from the Ministry of Health via the Director of Mental Health.

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MANATŪ HAUORA

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 have been prepared to provide guidance to District Inspectors in the exercise of their powers, duties, and functions pursuant to the Act. These guidelines are in effect from 1 July 2003.

As well as exercising the powers, duties and functions outlined in the Act, District Inspectors should develop an awareness of mental health and cultural issues which will assist them in their role.

I consider the key to the District Inspector role is building and maintaining positive and appropriate working relationships with patients, staff, and families of varying background and cultures. These relationships, together with those with fellow District Inspectors, the Director and Deputy Director of Mental Health, review tribunal and local police and courts, form the basis of all of the work carried out by District Inspectors. It is the attitude of District Inspectors, as well as their knowledge and skills, which helps ensure that the use of the legislation strikes the right balance between individual and community rights to freedom and to care appropriate to the needs of people suffering from mental disorder.

These guidelines are not a comprehensive interpretation of the Act as it applies to District Inspectors. If District Inspectors have concerns about the propriety of their actions they should seek guidance from the senior advisory District Inspector, or formal legal advice from the Ministry of Health via the Director of Mental Health.



Karen O Poutasi (Dr)
Director-General of Health

Preface

District Inspectors are lawyers appointed by the Minister of Health under the Mental Health (Compulsory Assessment and Treatment) Act 1992. District Inspectors assist people being assessed or treated under this Act by providing information and support to ensure their rights are upheld. In this way, District Inspectors provide an important safeguard if people are unhappy with the way that they are treated under the Act. This watchdog function is performed by District Inspectors whether a person is being treated within a psychiatric unit or in the community.

District Inspectors are independent from health and disability services. They are neither patient advocates nor legal advisors for the mental health or disability services. They are not health care providers. District Inspectors are required to be detached from the clinical decision-making processes that affect individual patients and care recipients.

The Ministry of Health values District Inspector functions as they often assist the process of quality improvement at an individual service level. Through their routine functions, District Inspectors become familiar with services and should be able to detect patterns or problems that others may not notice. In most cases, mental health services have used the process and recommendations of District Inspectors' reports to bring about positive changes and improvements in their service configurations and staff attitudes.

A handwritten signature in black ink, appearing to read 'D. Chaplow', is written on a white background. A vertical line is drawn to the right of the signature.

David Chaplow (Dr)
Director of Mental Health

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Background to the Role of District Inspector

Mental health legislation in New Zealand dates back to the Lunatics Act 1882. This Act first recognised the need for independent ‘inspectors’ of mental health services, and provided for the appointment of inspectors of lunatic asylums. Such inspectors had particular duties to monitor the rights and care of patients, and had similar powers of inspection and visitation as is conferred on modern day District Inspectors.

The current Mental Health (Compulsory Assessment and Treatment) Act 1992 is the only legislation that addresses society’s ability to detain a person in order to compulsorily assess and treat them for a mental disorder. (Other statutes can be used to compulsorily assess and treat individuals for other conditions, such as use of the Alcoholism and Drug Addiction Act 1966 for people with substance use disorders.)

The Mental Health (Compulsory Assessment and Treatment) Act 1992 provides for the management of individuals who need to be compulsorily assessed and treated for a mental disorder, defined as being “an abnormal state of mind (whether of a continuous or intermittent nature) characterised by delusions, or by disorders of mood or perception or volition or cognition, of such a degree that it (a) poses a serious danger to the health or safety of that person or others, or (b) seriously diminishes the capacity of that person to take care of himself or herself”.

Because the Act allows for people to be deprived of their liberty, society recognises that it has an obligation to ensure that individuals’ other rights are protected to the maximum extent possible within the requirements for assessment and treatment of persons with mental disorders. The Act has built-in protections aimed at ensuring that processes of assessment and treatment comply with basic principles of natural justice; that individuals detained under the Act are given treatment appropriate to their condition and in line with good clinical practice; and that they are not detained any longer than is required. Review mechanisms are also built-in along the way so that each individual or others on their behalf have an opportunity to appeal and review their clinical and legal status.

The office of District Inspectors is established by statutory authority under the Mental Health (Compulsory Assessment and Treatment) Act 1992, in order to ensure that people subject to compulsory assessment and treatment are advised of their rights, complaints of breaches of their rights are investigated and services are improved where required in order for their rights to be upheld.

Until the current Act, all individuals treated by mental health services came within the framework of mental health legislation, whether they were ‘voluntary’ or ‘committed’ patients. Now, however, rights of other consumers of mental health services (who make up 80–90% of such consumers) are provided for by the same legal framework as for other consumers of health and disability services, and the Code of Health and Disability Consumers’ Rights applies. The role of District Inspectors does not apply to such consumers, but to ensuring the rights of people assessed and treated compulsorily under the Act are upheld.

1 Appointment of District Inspectors and Deputy District Inspectors

- 1.1 The Minister of Health appoints District Inspectors and Deputy District Inspectors under section 94 of the Mental Health (Compulsory Assessment and Treatment) Act 1992. Only barristers or solicitors may be appointed as District Inspectors and Deputy District Inspectors. It is expected that their duties as District Inspectors will be conducted in addition to work as part of their normal law practice, and will comprise no more than 30 percent of their normal workload (including pro bono work).
- 1.2 District Inspectors and Deputy District Inspectors have the powers, duties, and functions conferred or imposed upon them by the Mental Health (Compulsory Assessment and Treatment) Act 1992. However, pursuant to section 94A(2)(b) of that Act, Deputy District Inspectors may only exercise these powers, duties, or functions at the direction of the Director of Mental Health or the District Inspector to whom they are acting as Deputy. District Inspectors and Deputy District Inspectors also have other powers, duties, and functions conferred or imposed upon them in writing by the Director of Mental Health for the purpose of dealing with situations of urgency (section 94A(1)(b), Mental Health (Compulsory Assessment and Treatment) Act 1992).
- 1.3 District Inspectors are appointed for a term of three years, and Deputy District Inspectors are appointed for a specified period of up to three years. District Inspectors and Deputy District Inspectors are eligible for reappointment from time to time. They may also be replaced from time to time.
- 1.4 **Appointment criteria** for District Inspectors and Deputy District Inspectors are:
- *legal knowledge and experience*: a good range of legal skills and experience, preferably with experience in mental health work
 - *mental health knowledge and experience*: experience working with the Mental Health (Compulsory Assessment and Treatment) Act 1992 and related legislation and/or experience in the mental health sector
 - *communication skills*: the ability to communicate with consumers and health professionals
 - *consumer sensitivity*: sensitivity to the specific needs of mental health consumers
 - *personal attributes*: especially sound judgement and commonsense
 - *cultural awareness, sensitivity and knowledge*: particularly of Māori culture
 - *regional and collegial commitment*.
- 1.5 The **appointment process** may vary from time to time, and reappointment of incumbents may occur in order to provide continuity and enable recently appointed incumbents to consolidate their experience in the role. An appointment process in recent use is described as follows by way of example.

- 1.5.1 Positions are advertised in *LawTalk*, a fortnightly magazine distributed to all barristers and solicitors with a current practising certificate. All applications, including curricula vitae and written references, are checked against criteria that reflect the skill base required for the position. Those who best demonstrate the criteria are shortlisted, whether they are existing District Inspectors or new applicants.
- 1.5.2 Where more than one applicant for a particular position is shortlisted, the applicants are interviewed by a panel comprising:
- the Director or Deputy Director of Mental Health
 - a senior solicitor, with knowledge of the District Inspector role
 - a consumer advisor
 - a cultural advisor.

The purpose of the interviews is to assess the interpersonal skills of the applicants and how they may relate to consumers and others and to examine their knowledge and understanding of the District Inspector role.

- 1.5.3 Before the interviews, mental health sector agencies, including consumer groups, family and carer groups, other community groups where known, and providers (both District Health Board mental health services and non-government organisations) are asked for their views of the current District Inspectors and of new applicants if they are known. Interviewees are given the opportunity to respond to comments received.
- 1.5.4 After the interviews, referees for all interviewees are spoken with, in addition to the written references they have supplied.

1.6 **Removal from office:** Pursuant to section 94(7)(c) of the Mental Health (Compulsory Assessment and Treatment) Act 1992, the District Inspector or Deputy District Inspector may be suspended or removed from office at any time by the Minister for any of the following reasons if they are proved to the Minister's satisfaction:

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

1.7 **Remuneration:** The Minister of Health may from time to time, with the concurrence of the Minister of Finance, fix the remuneration of District Inspectors and Deputy District Inspectors either generally or in any particular case. The two Ministers may also concur to vary the amount or nature of District Inspector or Deputy District Inspector remuneration (section 94(4), Mental Health (Compulsory Assessment and Treatment) Act 1992).

2 Senior Advisory District Inspector

- 2.1 The role of senior advisory District Inspector was established in 1999 by the Minister of Health. The purpose of the role is primarily to provide leadership and advice to other District Inspectors.
- 2.2 The senior advisory District Inspector works in the following capacities:
- acts as an advisor to all District Inspectors on mental health legislation or any aspect of their role
 - assists the Ministry of Health in developing national standards of practice for District Inspectors
 - conducts investigations and inquiries of a particularly complex or sensitive nature, and undertakes other special duties as directed by the Director of Mental Health
 - attends and speaks at professional group seminars and training events with a view to educating them about the role of District Inspector, and maintaining good interfaces with other agencies involved in protecting patient rights.
- 2.3 The senior advisory District Inspector also carries out the routine work of a District Inspector for at least four weeks a year in order to maintain expertise and knowledge of the consumer and provider issues.

3 Provision of Information and Checking of Documentation

- 3.1 District Inspectors are appointed to ensure that the provisions of the Mental Health (Compulsory Assessment and Treatment) Act are carried out correctly. Functionally, this role of District Inspector is more akin to an ombudsman than it is to the old model of an 'inspector' of mental health facilities and services. This is consistent with the recognition that individuals who are subject to compulsory psychiatric treatment have lost a very important right to freedom, and that certain safeguards are required to ensure they are not subject to abuse or ill-treatment.
- 3.2 District Inspectors monitor the application of the Act by ensuring that every individual who is subject to compulsory assessment and treatment under it is assessed and treated in accordance with the statutory requirements of in a fair and reasonable manner.
- 3.3 This role involves monitoring services and individuals' assessments, care, and treatment under the Act to ensure that individuals have the opportunity to appeal and seek review their treatment, both clinically and legally.
- 3.4 In practical terms, this means that a District Inspector has an obligation to see every individual subject to and provide them with information on the processes in which they are involved and to check documentation to ensure that it complies with the procedural steps outlined in the legislation.
- 3.5 The formal part of this role requires the District Inspector's involvement and monitoring of:
- assessment procedures under sections 12 and 14 of the Act
 - reviews under sections 35 and 76 of the Act
 - limited attendance at hearings under sections 16, 17–30, 34 and 79 of the Act.
- 3.6 In essence, under the Act, District Inspectors have two main roles:
- ensuring that every individual who is subject to compulsory assessment and treatment order under the Act is cared for in accordance with the statutory requirements of the Act and the principles of natural justice
 - overall monitoring of mental health services providing treatment to persons with mental disorders, as defined by the Act, to ensure their continued smooth and efficient operation and assist with quality improvement at the service level through visits to the different services and also via exercise of their statutory powers of investigation and reporting.

- 3.7 In carrying out these duties, District Inspectors perform four distinct but clearly related functions which, when amalgamated, constitute the District Inspector's role as a watchdog of patients' rights. These functions are:
- provision of information and checking of documentation
 - visitation and inspection
 - complaint handling and resolution
 - conducting inquiries.

4 The Assessment Procedure under Section 12

- 4.1 District Inspector functions routinely commence at section 12(8) of Act. By this stage, the first period of assessment and treatment of up to five days has been completed by the patient, and his or her responsible clinician has decided that a further period of assessment of up to 14 days is required. Under section 12(5)(f) of the Act, if the patient's responsible clinician is satisfied that the patient is mentally disordered and considers that the patient should undergo further assessment and treatment, the responsible clinician will send a copy of the certificate of further assessment to the District Inspector (section 12). (In practice, the Director of Area Mental Health Services will ensure there is a system in place for District Inspectors to receive such certificates 'forthwith'.)
- 4.2 A District Inspector who receives a copy of the certificate of further assessment must consider whether or not an application should be made to have the patient's condition reviewed under section 16 of the Act. To make such a decision, the District Inspector is required to talk to the patient and where possible, ascertain the patient's wishes in the matter (section 12(8)).
- 4.3 If the District Inspector considers such an application should be made, he or she shall take whatever reasonable steps are necessary to encourage or assist the patient, the patient's welfare guardian, principal caregiver (for a definition of principal caregiver, see *Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992* (Ministry of Health 2000), or usual medical practitioner to make this application for a review (section 12(9), *Mental Health (Compulsory Assessment and Treatment) Act 1992*). If none of the people listed above will make an application, the District Inspector may report the matter to the court and the judge may decide to review the patient's condition under section 16 as if an appropriate application had been made.
- 4.4 A District Inspector's visit to a patient under the provisions of section 12 of the Act is the first formal occasion on which each patient meets a District Inspector, although the District Inspector may have met the patient on earlier visits to the hospital during the patient's initial five days of assessment and treatment. During this visit, the District Inspector should introduce him or herself in the District Inspector role, acquaint the patient with the functions of a District Inspector, explain the patient's rights under the Act, and discuss the option to apply for a review of the patient's condition by a judge under section 16 of the Act. The District Inspector should provide information to the patient about the next steps in the process of compulsory assessment and treatment, explain the review process under section 16 of the Act, and encourage the patient to make an application under section 16 of the Act if the District Inspector considers such an application should be made. Appendix 1 suggests a set of steps to follow when formally meeting a patient for the first time under section 12 of the Act.

5 The Assessment Procedure under Section 14

- 5.1 The District Inspector's next formal involvement with a patient is under section 14 of the Act. If, before the expiry of the second period of assessment and treatment, a patient's responsible clinician considers that the patient is not fit to be released from compulsory status, the responsible clinician must send a copy of the certificate of final assessment to the District Inspector (section 14(4)(b)(vi)). On receipt of a copy of the certificate of final assessment, the District Inspector is required to talk to the patient and, where possible, ascertain the patient's wishes about whether to appear in court at the compulsory treatment order (CTO) application hearing (section 14(6)).
- 5.2 A District Inspector's visit to a patient under the provision of section 14 of the Act is the second formal occasion on which each patient meets a District Inspector through the assessment process. During the visit, the District Inspector must provide information to the patient about the next step in the process of compulsory assessment and treatment and explain the process that will take place when the court considers the clinician's application for a compulsory treatment order. Where possible, the District Inspector should ensure that a system is in place to provide the patient with a lawyer, and that the name and phone number of the rostered lawyer for that week is available to the patient. In the event that there are no lawyers rostered to deal with patients in the hospital or service, or the patient does not want legal representation, the District Inspector should attend the hearing but should be careful to limit his or her role to one of *amicus curiae* (ie, ensuring that the court is aware of all relevant issues but not advocating the patient's cause). The District Inspector is not the patient's advocate or lawyer and the District Inspector's presence at the court hearing may be superfluous if the patient already has a lawyer. Therefore, attendance at such hearings should only be undertaken when specifically requested or necessary to protect the patients' rights. Appendix 2 suggests a set of steps to follow when formally meeting a patient under section 14 of the Act.

6 Review Procedures under Sections 35 and 76

- 6.1 Pursuant to section 76 of the Act, all patients subject to a compulsory treatment order have their condition formally reviewed by their responsible clinician within three months of the initial order. Following the first three months, the reviews take place at least every six months. A patient must attend his or her clinical review. If he or she fails to attend, the Director of Area Mental Health Services (DAMHS) is authorised to apply for a warrant authorising any member of the police to take the patient to the place specified in the warrant in order to undertake the clinical review (section 113A). If the responsible clinician reviews the patient and concludes he or she is not fit to be released from compulsory status, the responsible clinician must send a copy of the review report to the District Inspector.
- 6.2 If the responsible clinician considers that the patient is not fit to be released from compulsory status, but the District Inspector or a friend or relative of the patient is of a contrary opinion, section 35(2) of the Act allows the District Inspector, friend, or relative to refer the case to the Mental Health Review Tribunal for consideration under section 79 of the Act.
- 6.3 A District Inspector who receives a copy of the certificate of clinical review under section 76 of the Act must consider whether or not an application should be made to the Mental Health Review Tribunal for a review of the patient's condition. To make such a decision, the District Inspector is required to communicate with the patient (by talking with him or her unless this is impracticable, in which case communication should be in writing), and where possible, ascertain the patient's wishes in the matter.
- 6.4 If the District Inspector considers that an application should be made, he or she should encourage the patient or the other recipients of the clinical review certificate under section 76(7)(b) of the Act to make an application. If none of the people listed in section 76(7)(b) will make the application, the District Inspector may report this matter to the Mental Health Review Tribunal, and the review tribunal may subsequently review the patient's condition under section 79 of the Act (or section 80 of the Act if a special patient). It is important to consider that where a District Inspector makes a decision to recommend an application be made to the Mental Health Review Tribunal, this will be contrary to the medical opinion of the responsible clinician regularly treating that patient.
- 6.5 Appendix 3 contains a summary of information about the Mental Health Review Tribunal, their powers, and functions.
- 6.6 Following a Mental Health Review Tribunal hearing concluding that the patient is not considered fit to be released from compulsory status, the District Inspector is required to meet with the patient to ascertain the patient's wishes in the matter and consider whether or not an appeal should be made to the court against the review tribunal's decision (section 79(12)).

7 Attendance at Hearings under Sections 16, 17–30, 34 and 79

- 7.1 It should be noted that attendance at hearings by District Inspectors is a matter for discretion and judgement. Attendance at such hearings should occur only where there is some good reason to attend. Ordinarily, where the District Inspector has referred the matter to the court (eg, under section 12(10) of the Act) or referred the case to the review tribunal (eg, under sections 35(2) or 76(11) of the Act), a District Inspector would attend the hearing. A District Inspector would also attend a hearing of a compulsory treatment order under section 14(6) of the Act if a patient has specifically asked a District Inspector to do so.
- 7.2 In each of these hearings, the District Court Judge or Mental Health Review Tribunal is the statutory person who is responsible for making the decision about the patient's status. It is important that the District Inspector's role is not compromised by appearing to offer views about the patient that may impinge on the decision-making power of the District Court Judge or review tribunal.
- 7.3 It is also important to realise that frequent attendance or availability of a District Inspector at hearings may impede the development of legal representation in that locality.

8 Visitation and Inspection

- 8.1 Under section 96(1)(a), at least once a month, District Inspectors must visit each of the hospitals and services in their particular region in which any patient is being assessed or treated as an inpatient under the Act. Under section 96(1)(b), all hospitals or services in a District Inspector's particular region in which people are assessed or treated as outpatients under the Act must be visited at least four times a year at regular intervals and when the Director of Mental Health directs.
- 8.2 The Ministry of Health's view is that in order to fulfil the requirements of the Act, it is necessary to visit each community mental health service that manages patients as outpatients four times per year. It is the Ministry's view that the provision of residential care can be effectively monitored via review under section 76 of the Act and periodical review of residential facilities as is felt necessary. A 'service' under the Act does not normally include places of residence or boarding houses, and these are not included as places District Inspectors must routinely visit. District Inspectors may still visit places of residence, but such areas should only be visited where there is a specific concern or complaint.
- 8.3 The extent of a District Inspector's powers of inspection is outlined in section 97 of the Mental Health (Compulsory Assessment and Treatment) Act 1992. When visiting any hospital or service on District Inspector business, District Inspectors should have access to every part of the hospital or service and every person in it, whether or not that person is detained under the Act. On each visit the District Inspector makes to the hospital or service for the purposes of this Act, the responsible clinicians are to provide the District Inspector will access to the following:
- 8.4 Registers and records required to be kept by or under the Act. To show that they have seen the items produced, District Inspectors may sign any of the produced registers, records, or books under the last entry of the document.
- 8.5 Any orders and other documents relating to any of the patients the District Inspector requires to see.
- 8.6 All letters and other postal packets withheld by the responsible clinician under section 123 or section 124.
- 8.7 As a specific part of their role, the Director of Mental Health expects District Inspectors to regularly inspect use of force, restraint and seclusion registers at each hospital or service in their region. When District Inspectors view these registers they should be ensuring the appropriate use of force, restraint and seclusion by checking for a pattern of restraint or seclusion that might indicate the culture of the unit, or that might indicate that rights of an individual patient (or patients in general) are being impinged upon. If a pattern is discovered in the register or the District Inspector has concerns about the use of restraint and seclusion at the hospital or service, these concerns must be addressed to the Director of Area Mental Health Services in the first instance, and should also be noted in the monthly report to the Director of Mental Health.

- 8.8 Within 14 days of any visit to a hospital or service, a District Inspector must give a written report on the visit to the DAMHS (section 98). District Inspectors are also required to prepare and deliver a monthly report to the Director of Mental Health on the exercise of that District Inspector's powers, duties, and functions under during the preceding month (section 98A).

9 Complaint Handling and Resolution

- 9.1 District Inspectors have an important role as legal ombudspersons in receiving and investigating complaints by patients about alleged breaches of rights under the Act and other matters relating to care and treatment. Many of the matters brought to the attention of the District Inspector can be resolved through informal contacts and liaison between the District Inspector, the patient, the responsible clinician and Director of Area Mental Health Services where appropriate. Statutory authority is found in sections 75 and 95.
- 9.2 Most complaints will have been made directly to the District Inspectors by patients or their families or significant others. Additionally complaints about mental health treatment matters are also made to the Office of the Health and Disability Commissioner. Where these complaints relate to the care and treatment of patients detained under it will usually be appropriate that these complaints are forwarded to the District Inspector for investigation. It is, however, important to note that the District Inspector can only inquire within their jurisdiction. Thus if the complainant specifically requests an investigation of an alleged breach of rights under the Health and Disability Commissioner's Code the complaint will need to be investigated by the Office of the Health and Disability Commissioner as it is only that office that can make a finding of a breach of the code.
- 9.3 Where a complaint made to the Office of the Health and Disability Commissioner involves a person not subject to compulsory assessment and treatment under the Act, it will generally not be appropriate for the complaint to be referred to a District Inspector. However, where the complaint concerns a situation where an individual may meet the requirements to be found mentally disordered under the Act, and a complaint concerns a breach of rights under the Act, if the responsible District Inspector agrees, it may be appropriate for such complaints to be referred to the District Inspector for resolution.
- 9.4 Before a final decision about the passing on of a complaint by the Office of the Health and Disability Commissioner to the District Inspector, the District Inspector should ensure that a representative of the Office of the Health and Disability Commissioner has discussed the possible referral with the complainant. They will need to be assured the limits of the jurisdiction of the District Inspector has been explained to the complainant, and their agreement to such a referral was obtained. If the complainant specifically requests an investigation and resolution of a complaint of an alleged breach of specific rights under the Health and Disability Commissioner's Code it will remain the responsibility of that office to investigate the complaint. It is important that the complainant makes an informed decision as the different jurisdictions have different processes and remedies available.

10 Section 75 Inquiries

- 10.1 District Inspectors have an important role as legal ombudsmen in receiving and investigating complaints by patients about alleged breaches of their rights under and other matters regulating care and treatment. In this way they assist the process of quality improvement at an individual service level. This is accomplished by their role in investigating and resolving complaints under sections 75 and 95 of the Act. In most cases, mental health services have used the process and recommendations of District Inspector reports to bring about positive changes in their service configuration and staff attitudes. District Inspector investigations also provide a complaints resolution process which is readily available to allow dissatisfied patients to address legitimate concerns about their treatment under the Act.
- 10.2 Under section 75 of the Act, a District Inspector may investigate complaints of breaches of patients' rights, report on that investigation, and make recommendations to the DAMHS.
- 10.3 Investigations under section 75 of the Act are concerned with complaints of breaches of patients' rights. The rights of patients are specified and particularised in Part VI of the Act. General rights to information are outlined in section 64 of the Act, and specific rights are set out in sections 65 to 74. Those complaints may be made by patients themselves or certain other people acting on their behalf. Section 75 investigations are a routine part of a District Inspectors work and are usually conducted informally. Such investigations may form the basis of more indepth inquiries or may be used to determine whether there are any issues requiring further investigation.
- 10.4 Appendix 5 contains a detailed description of necessary procedures the District Inspectors must undertake when conducting both section 75 and 95 investigations in order to comply with the Health Information Privacy Code requirements pertaining to gathering and storage of health information.
- 10.5 If a District Inspector receives a complaint of possible criminal activity during an inspection or investigation such as an assault by a staff member, the District Inspector should advise the manager or chief executive officer of the hospital or service immediately with consideration being given to the matter being reported to the Police. It is important in cases of serious allegations that the District Inspector does not conduct an investigation that may impair a full and proper police investigation.
- 10.6 Where a complaint is made by or on behalf of a patient that any of the rights set out in Part 6 of the Act have been breached, a District Inspector shall investigate the matter under section 75 of the Act. For example, a District Inspector shall investigate if a patient complains that his or her mail is being withheld by staff. The District Inspector must use his or her professional judgement to assess the seriousness and validity of such complaints.
- 10.7 In cases where there is a complaint over inappropriate medical treatment, the District Inspector should discuss this with the DAMH before proceeding. In some cases, it may be necessary to have a psychiatrist assist the District Inspector to ensure that practices are critiqued from a position of sufficient knowledge.

- 10.8 The District Inspector is required to talk with the patient, the complainant (where that is not the patient but someone making a complaint on the patient's behalf), and everyone else involved in the case and to generally investigate the matter. Where the District Inspector is satisfied that the complaint has substance, he or she must report the matter to the DAMHS together with recommendations as the District Inspector thinks fit.
- 10.9 Once referred to the DAMHS under this provision, there is a mandatory requirement that the DAMHS take "all such steps as may be necessary to rectify the matter" (section 75(2)).
- 10.10 The District Inspector must inform the patient or complainant of the investigation's findings under section 75(3) of the Act. There is a discretion as to how the patient/complainant is informed and at times clinical advice on the least disruptive way of advising is appropriate, particularly where a complaint is not upheld. If the patient or complainant is not satisfied with the outcome of the complaint to the District Inspector, the patient or complainant may refer the case to the Mental Health Review Tribunal for further investigation (section 75(4)).
- 10.11 It is important, particularly in relation to special incidents, that the District Inspector first consults the patient's notes and special incident report and undertakes a proper investigation of all persons involved in any allegation. A full report of that investigation should be forwarded to the DAMHS and the Director of Mental Health, together with recommendations where appropriate. A copy should also go to the manager or chief executive officer of the hospital or service.
- 10.12 If it is intended that a copy of the report should be kept on the consumer record (for example, to correct information under the Health Information Privacy Code) this should be noted clearly in the report.

11 Conducting Section 95 Inquiries

- 11.1 Under section 95 of the Act, District Inspectors may inquire into:
- any possible breach of (or regulations made under it)
 - any breach of duty by any officer or employee in the hospital or service
 - any other matter pertaining to patients or the management of the hospital or service.
- 11.2 District Inspectors have the same powers and authority as are conferred upon a Commissioner of Inquiry by the Commissions of Inquiry Act (1908) with regard to summoning witnesses and obtaining evidence (section 99(a)). This provision is a general provision, providing wide powers for District Inspectors to make inquiries ranging from follow-up inquiries on a particular problem all the way to a formal inquiry into major incidents. District Inspectors may undertake the lower-level, more narrowly focused inquiries routinely.
- 11.3 The major role of section 95 is to provide legal authorisation for the District Inspector to enter a facility and look around. Most common are very narrow inquiries in which a District Inspector uses his or her general powers of inquiry under section 95 of the Act to investigate one particular aspect of a service and to report on the results of that investigation. For example, if it appears to a District Inspector that some aspects of a service's quality are being compromised, then he or she may wish to make some specific inquiries about the situation. As part of these inquiries, the District Inspector will usually seek information from the DAMHS, the manager of the service, or other staff.
- 11.4 The more major inquiries conducted under section 95 of the Act are generally large scale and concerned with major incidents such as a suicide or assault on a patient that have not been satisfactorily investigated or resolved at a local level. It should be noted that large-scale section 95 inquiries are relatively rare. In recent years, there have never been more than one or two section 95 inquiries annually in which District Inspectors have used the full powers of a Commission of Inquiry. Appendix 4 outlines the standard decision-making process for initiating inquiries under section 95 of the Act and the standard procedure the Director of Mental Health uses when dealing with an inquiry report.
- 11.5 A District Inspector, the Director of Mental Health, or the Minister of Health may initiate such inquiries. Because of the formality of section 95 inquiries and their potential impact on a service, District Inspectors should always consult with the Director of Mental Health before proceeding with a section 95 inquiry. Inquiries are not usually undertaken without first considering whether the local service has sought to investigate and address the issues that are the subject of the proposed inquiry. In most cases, this is because it is preferable for a service provider to conduct its own investigation into complaints and incidents, using external expertise where appropriate.
- 11.6 A formal section 95 inquiry should only be instigated if there is clear evidence of outstanding issues that are not being addressed by the mental health service.

- 11.7 The Director of Mental Health may also direct a District Inspector to undertake an inquiry under section 95 of the Act. Such an inquiry would normally be undertaken if the Director were provided with information from consumers, family/whānau members, or service staff that there was a major issue that needed to be investigated. Such an issue would first be addressed with the service, and any correspondence created is likely to be copied to the DAMHS. If it were subsequently considered that there was sufficient evidence that the issue had not been satisfactorily resolved by the service, the Director of Mental Health would normally ask for a section 95 investigation to be undertaken.
- 11.8 The Director of Mental Health may sometimes ask a District Inspector to undertake a section 95 inquiry in another region. This is usually done so that the relationship between the local District Inspector and the local service is preserved or to ensure a 'fresh perspective' on issues.
- 11.9 Appendix 5 contains a detailed description of necessary procedures the District Inspectors must undertake when conducting both section 75 and 95 investigations in order to comply with the Health Information Privacy Code requirements pertaining to gathering and storage of health information.
- 11.10 District Inspectors are required to report on the outcome of their inquiries to the Director of Mental Health. In deciding on the format for their reports, a District Inspector shall give particular consideration to presentation, so that information, which should be released to the family and potentially to the public, comprises the report proper. This information should be comprised of findings of fact, major conclusions, and any recommendations for changes to be made to service provision or to policy or legal frameworks. More detailed information on the events as reported to or established by the inquiry, and information identifying persons involved and those providing information to the inquiry should be attached as appendices to the main report. When submitting the report, a District Inspector may wish to draw to the attention of the Director of Mental Health, or the service provider, matters that they consider are not properly placed in the report itself. The District Inspector should also keep in mind that reports may be discoverable by courts in any subsequent legal action undertaken, and use his or her legal discretion and judgement regarding privacy concerns in preparing their reports.
- 11.11 There are no statutory actions that the DAMHS must undertake in response to a District Inspector's report. However, the Director of Mental Health usually sends a copy of the report to the particular mental health service concerned, with a request for comments on the report's recommendations and a request that certain specific action(s) be taken if the Director considers this to be appropriate. Where there are concerns about service provision, it should be reported to the Director of Mental Health who will in turn take this to the District Health Board responsible.
- 11.12 The Director of Mental Health uses his or her own judgement, skill, and experience to determine if further action needs to be taken in response to a District Inspector's report. This will depend on the facts of each particular case, the recommendations that are made in the report, and any response that the service has already made or is planning to make to the report.

- 11.13 The District Health Board may be asked to address issues raised in a District Inspector's report if those issues arise from the way in which mental health services are funded. On rare occasions, an issue may also arise that requires action by another party, such as the Police. Some issues may also need to be followed up directly by the Ministry of Health.
- 11.14 It is important to note that the Director of Mental Health does not have the authority to direct services to take specific action(s) in response to a District Inspector's report. In the past, most recommendations made by District Inspectors in their reports have been implemented. Indeed it is not uncommon for a service to begin addressing issues during the course of a District Inspector's inquiry.
- 11.15 It is also important to emphasise that the Ministry of Health and the Director of Mental Health expect district health boards and mental health services and other publicly-funded health services to establish their own quality and safety monitoring processes. The Ministry of Health and Director of Mental Health also expect that services will undertake their own internal reviews of every incident that occurs or any issues of serious concern that are raised by District Inspectors, clinicians, patients, or their advocates. This is what is expected of any other health or disability support service. It is only if this internal review and follow-up does not occur, or if the service's response does not appear to adequately address the concerns which have been raised, that the Director will seek to use a District Inspector to inquire further into the matter.

12 Accountability Relationships

- 12.1 One of the most significant features of the District Inspector's role is their independence from mental health services. The District Inspector acts like an ombudsman for people who receive compulsory care under the Act. This role requires District Inspectors to maintain impartiality and detachment from mental health services and the clinical decision-making processes that affect individual patients.
- 12.2 An accountability relationship exists between District Inspectors and the Director of Mental Health. The Director monitors District Inspectors' activities via their monthly reports and authorises the payment of all financial claims for District Inspectors' services. The Director may confer or impose powers, duties, and functions on a District Inspector in writing for the purpose of dealing with situations of urgency under section 94(6) of the Act. These situations are infrequent and are defined as urgent by the Director. The Director may also direct a Deputy District Inspector to exercise his or her powers under section 94(a) of the Act.
- 12.3 The Director of Mental Health carefully considers each District Inspector's monthly report to ensure work that has been undertaken is consistent with the District Inspector's powers, duties, and functions under the Act. From District Inspector's monthly reports the Director is also able to identify any additional issues, which have been raised, that require follow-up by the Ministry of Health.
- 12.4 If the Director of Mental Health considers that a District Inspector has discharged his or her statutory powers in an unnecessary or inappropriate way (for instance, by invoking a section 95 inquiry without first allowing an internal inquiry to be conducted by the local service), then the Director will address these concerns directly with the District Inspector.
- 12.5 District Inspectors are granted civil immunity under section 99(a)(1) of the Act so that they may function effectively without being hampered by litigation or threats of litigation. No civil proceedings may be brought against District Inspectors for anything they may say, do or report in the course of exercising their powers, duties, or functions under the Act unless it is shown that they acted in bad faith. However, this does not affect the right of any person or organisation to apply for judicial review of a District Inspector's powers, duties, or functions under section 99(a)(2) of this Act.
- 12.6 The obstruction of a District Inspector performing his or her official duties is punishable by a fine of up to \$2000 under section 117 of the Act. A DAMHS, responsible clinician, or an employee in any hospital or service being visited by a District Inspector may be charged with obstruction if it is shown that he or she has:
- concealed or attempted to conceal from the District Inspector any part of the hospital or service or any person being detained or treated in it
 - refused or wilfully neglected to show to the District Inspector any part of the hospital or service or any person detained or being treated in it
 - in any other manner wilfully obstructed or attempted to obstruct the District Inspector in the conduct of his or her official duties.

To date there is no known prosecution of anyone pursuant to this provision, and any District Inspector thinking they have been obstructed within its parameters should discuss the situation with the Director of Mental Health.

- 12.7 As noted in section 13 of these guidelines, District Inspectors must report any visits to hospitals or services and the outcome of any investigation and inquiries to the DAMHS and Director of Mental Health within specific timeframes. However, there is no direct accountability relationship between District Inspectors and DAMHS.

13 Reporting and Invoicing

- 13.1 The monthly report provided to the Director of Mental Health by District Inspectors is the principal reporting and accountability mechanism by which the Director of Mental Health monitors District Inspectors and their work. This report must be standardised to provide timely and useful information. The monthly report and accompanying invoice should be itemised and contain sufficient information to enable the Ministry of Health to clearly identify that the tasks each District Inspector has undertaken relate to the administration of the Act.
- 13.2 The Ministry of Health has a preferred standard for reporting. Reports should be completed by District Inspectors within seven days of the end of the month to show workload, number and frequency of patients and visits, number and seriousness of complaints, invocation of inquiry powers, and any matters of concern. Presented in this way, information is useful and allows the Director of Mental Health to discern trends and to follow up matters of concern.
- 13.3 For the most part, reports need contain only a brief description of the duties undertaken, with more detailed comments on matters that have required further investigation or inquiry. District Inspectors should give a description of the work carried out and the number of units (six-minute intervals) it has taken to perform the reported tasks. Tasks should be listed by date or type, and the total of the units should be referred to in the GST invoice that accompanies the report. The report should follow the model set out in Appendix 6.
- 13.4 Separate reports will need to be filed for inquiries undertaken pursuant to sections 75 and 95, and invoices will need to be broken down to show each component of District Inspector work. It should be provided in such a way as to show subtitles for the following components worked each month:
- Direct client contact and related work for the purposes of fulfilling the statutory requirements around assessment and treatment under the Act. Itemise according to patient name, and show the appropriate section of involved.
 - Other work directly related to these requirements and the general provisions of the Act (eg, visiting services, meeting with DAMHS, liaising with the Ministry of Health, etc). From this information, the Director of Mental Health should be able to establish the time spent on routine District Inspector duties and inquiries carried out under sections 75 and 95 of the Act.
- 13.5 For time spent investigating complaints under section 75 and section 95 of the Act, provide a separate, itemised account for each, stating the name of patient and activity undertaken. When reporting on an inquiry undertaken pursuant to section 75 of the Act, a District Inspector must show who made the complaint, the nature of the complaint, and minimum details about the investigation and outcome of the inquiry. More information may be covered in the report to the Director of Mental Health if the District Inspector feels the need to expand on the information.
- 13.6 The Ministry of Health expects any District Inspector mounting such an investigation to provide in their report at a minimum:

- a copy of the investigation report, written in a manner which protects the privacy of individuals, the family, and those closely involved with the public
- in addition to the report, a copy of any further information provided to the District Inspector, such as that relating to the conduct or competence of individuals, together with any further recommendations not fully included in the report, to the Ministry of Health
- in the event that this is required for review of competence of an individual health professional (which is a rare event), a full copy of relevant parts of the investigation report and/or papers to the relevant investigation or review body.

13.7 The invoice for hours worked should be in a separate attachment and indicate the time spent rather than billable units. The invoice should follow the model invoice set out in Appendix 7 and should contain no confidential information.

Appendix 1: Steps to Follow when Formally Meeting a Patient for the First Time under Section 12

When advising a patient about a review under section 16 of the Act, a District Inspector may find it helpful to follow these steps:

- A1.1 During the first meeting with a patient, it is important for a District Inspector to explain the role of District Inspectors. District Inspectors may find it helpful to give patients the pamphlet *Your Rights Under the Act 1992*, so that patients are aware of their rights once subject to the compulsory assessment process. Hospital and health services keep copies of this pamphlet.
- A1.2 The District Inspector should encourage patients to address any complaints or concerns in the first instance to their nurse, general practitioner, or health professionals with whom they usually have contact. If a patient's complaint relates to any of these persons, the District Inspector should advise the patient that such complaints can be made directly to the District Inspector.
- A1.3 During the initial meeting with the patient, it may be helpful for the District Inspector to encourage the patient to have his or her keyworker present during the meeting, and a family/whānau member or support person.
- A1.4 The District Inspector should explain that a review under section 16 of the Act is a review of the patient's condition by a judge and that this is carried out sooner than would normally take place during an assessment procedure.
- A1.5 District Inspectors may explain the section 16 review procedure by referring to the actual certificate of further assessment. The patient should be told that the procedure is an opportunity for a judge to review the decision of the patient's responsible clinician if he or she decided that the patient was not fit to be released (ie, that the patient needed a continuous compulsory assessment).
- A1.6 If the patient wishes this review to take place, the District Inspector should ask if the patient has a lawyer, welfare guardian or a family/whānau member who will assist with the procedure. The District Inspector should explain that he or she will not be acting as the patient's lawyer during the procedure. If the patient does not have a lawyer, the District Inspector should explain that he or she will arrange for one of the rostered lawyers to meet with the patient and take his or her instructions. The District Inspector should advise the patient wishing to have a section 16 review about his or her eligibility for legal aid. The District Inspector should provide the patient with the name and phone number of the lawyer(s) rostered to represent patients at the hospital or service.

- A1.7 If the patient wishes to know more about the review process, the District Inspector should explain what is likely to be involved. The District Inspector should inform the patient that a judge will meet with the patient at the hospital and discuss the patient's situation with his or her responsible clinician and at least one other health professional or any other person the judge thinks fit. The District Inspector should encourage the patient to provide the names of other people with whom he or she thinks the judge should speak.
- A1.8 It may be helpful for a District Inspector to advise patients that they can take their time in applying for a review under section 16 if they wish. For example, if a patient has just been admitted, is clearly distressed, and has no evidence to put before a judge apart from the views of his or her responsible clinician, the District Inspector may warn the patient that the judge may decide to retain the patient's compulsory treatment status in the absence of any other evidence. This decision must be reached with sensitivity, as the District Inspector should not try to dissuade patients from exercising their review option, but should ensure that patients do not unduly set themselves up for failure and disappointment. A discussion of prospects of success, particularly if a patient makes any comment inviting the same, is an opportunity to give the person a realistic view of the likely outcome pursuant to section 16 and an opportunity to encourage the person to 'work with' the health professionals.
- A1.9 If the patient is subject to an inpatient assessment or treatment order, the District Inspector may wish to advise them that, as required by the Land Transport Act, their drivers' licence will be taken from them and held by the hospital until their responsible clinician has decided they are again fit to drive, and the licence is suspended until that time.
- A1.10 Not all patients can easily engage in discussion, and initial attendances may need to be adapted to particular patients. A return visit may be preferable if possible and it may be necessary to arrange to attend with an interpreter or with a friend or family member present. Great care should be taken in attending patients being assessed under the Act for the first time.

Appendix 2: Steps to Follow when Formally Meeting a Patient on Receipt of a Certificate of Final Assessment under Section 14

When advising a patient about the outcome of a final assessment under section 14 of the Act, a District Inspector may find it helpful to follow these steps:

- A2.1 On receipt of the certificate of final assessment, the District Inspector will meet the patient formally for a second time during the assessment process. This meeting may serve as an opportunity to discuss what a Compulsory Treatment Order (CTO) hearing involves (section 17). Sometimes it is appropriate to explain the use of the word 'final' in relation to this certificate, to clarify that 'final' means 'last formal assessment by the responsible clinician before a court hearing'.
- A2.2 The District Inspector should give the patient some idea as to what he or she may wish to do or consider in preparation for such a hearing. The patient should be informed that he or she will meet with a judge and that the hearing will be relatively informal, taking place at the hospital or service. The District Inspector should advise the patient that the judge will talk to the patient's responsible clinician as well as the patient or the patient's lawyer, welfare guardian, or family/whānau member acting on the patient's behalf. The District Inspector may advise the patient to consider authorising their lawyer to see the written report that the responsible clinician will produce, and possibly the other health professional will produce, so that that lawyer can go through those reports with the patient before the hearing, to work out which parts the patient accepts and which parts, if any, the patient is contesting.
- A2.3 The District Inspector should explain where the court hearing is taking place, that it is likely to be in a particular room at the hospital rather than at the court house; that the judge's job is not to do with crime and punishment, but relates to making a decision about the legal basis for any on-going treatment need. The District Inspector should also point out the hearing is relatively informal, that it is not open to the public or press, and that everyone present will have a personal or professional link with the patient. It is often useful to go through who the six or seven people likely to be present are.
- A2.4 The District Inspector should explain that there are effectively four possible outcomes from a CTO hearing. The judge may decide:
- that the patient is fit to be released (ie, that compulsory treatment stops and the patient is discharged)
 - to issue a CTO requiring the patient to undertake inpatient treatment (ie, hospital-based treatment with the provision for trial leave)

- to issue a CTO requiring the patient to undertake treatment in the community (a community treatment order). To make this decision, the judge will require details about where the patient will live and what support structures they will need and have available. The District Inspector should advise the patient that the judge may require a social worker's report or a report from a community worker as to the viability of a community treatment order for the patient
- to delay or adjourn the hearing for up to one month.

A2.5 District Inspectors may advise the patient that a delayed hearing may be useful for two reasons:

- The patient's condition may be changing rapidly and within a few weeks the patient may be fit to be released, with the option of voluntary treatment being acceptable. This option avoids the CTO and also avoids the stigma of having the CTO issued to the patient.
- A delay enables a judge to obtain more information to assist in making a better decision. For example, at a first hearing a judge may direct that a particular person (eg, social worker or member of the patient's ethnic community) completes a report. During this period of delay, the patient might seek guidance about workable options for community-based treatment, and these options may be brought to the attention of the person nominated to write the report.

A2.6 Where appropriate, the District Inspector may inform the patient that there is provision for an independent psychiatric opinion to be obtained in certain cases. It may be useful to point out that 'independent' means clinically independent and may involve a psychiatrist employed by the same service.

A2.7 It is important that the District Inspector and patient discuss who the patient wishes to be present at the CTO hearing, either to provide personal support for the patient or to give evidence in support of the patient's case.

A2.8 If the patient is able to understand the concepts on which the hearing is based, the District Inspector may discuss the statutory definition of 'mental disorder' in some detail. The District Inspector may explain that in order to make a compulsory treatment order, the judge must find:

- that the patient has an abnormal state of mind as defined in (section 2)
- that this abnormal state of mind is of such a degree that it poses a serious danger to the health or safety of the patient or others, or seriously diminishes the patient's ability to take care of him or herself
- that a CTO is necessary. If the patient is mentally disordered, but clearly consents to a voluntary treatment option that best addresses his or her mental disorder and demonstrates a history of compliance with such voluntary orders, the judge may deem a CTO to be unnecessary.

A2.9 The District Inspector should encourage a patient who feels disempowered to take steps towards self-help, such as obtaining legal representation or ensuring that a person who can assist him or her in the assessment process is informed about the patient's condition or circumstances.

Appendix 3: Mental Health Review Tribunal

In order to meet his or her obligations under section 76(9) of the Act, the District Inspector requires a knowledge of the Mental Health Review Tribunal and its workings. The following is a summary of information about the review tribunal, its powers and functions.

- A3.1 The review tribunal usually has a three-person membership comprising a psychiatrist (independent of the local hospital), a lawyer and a lay person. Other people may be co-opted as required (section 103).
- A3.2 The District Inspector may find it useful to carry a reference copy of the draft application for review, as this sets out the minimal requirements of the review tribunal.
- A3.3 Anybody listed in section 76(7)(b) of the Act can apply for a review of the patient's case by the review tribunal under section 79A of the Act. In addition to this, a solicitor acting for the patient or the District Inspector could sign on behalf of the patient **as long as the reasons for so doing are clearly stated**. The patient applying to the review tribunal may also be eligible for legal aid if he or she does not have income or capital that would exclude such eligibility.
- A3.4 Section 79 of the Act specifies that applications for review should be addressed to the convener of the review tribunal (section 79(4)). The District Inspector provides the patient with the address to which the application should be sent. The address of the review tribunal is:
- Mental Health Review Tribunal
PO Box 10 407
The Terrace
Wellington
- A3.5 The review tribunal operates to a tight timetable. Section 79(5)(b) of the Act requires the review of the patient's condition to begin as soon as practicable and not later than 21 days after the receipt of the application. Therefore, it is important for District Inspectors to emphasise to patients the importance of having all information (including reports from relevant people) ready for the hearing.
- A3.6 The review tribunal may refuse to consider an application for review if it has received one from the same patient within three months and the responsible clinician confirms that there has been no change in the patient's condition. The review tribunal may refuse to consider an application if the application is made by a relative or friend and the review tribunal is satisfied that the application is made otherwise than in the interests of the patient.
- A3.7 The review tribunal can decide either:
- that the patient is fit to be released from his or her compulsory treatment order (CTO)
 - that the patient is not fit to be released from his or her CTO.
- A3.8 Patients have the right to appeal to a district court against a review tribunal decision (section 83).

- A3.9 District Inspectors should advise patients that the information required by the review tribunal is similar to the evidence heard by a district court judge in a CTO hearing. The review tribunal is essentially making the same decision, namely whether the patient is mentally disordered within the meaning of the Act (section 2), whether a CTO is necessary, or whether the patient is fit to be released from a CTO.
- A3.10 The procedural provisions relating to the review tribunal are set out fully in the First Schedule of the Act. It may be helpful for the District Inspector to carry reference copies of this schedule in order to advise patients fully or to give to patients when appropriate.
- A3.11 District Inspectors should remind patients of the review tribunal's power to co-opt persons with specialised knowledge or expertise (section 103). Such co-opted persons may include a person whose ethnic identity is the same as the patient or someone of the same gender as the patient.
- A3.12 The District Inspector should advise the patient that the convener, or other review tribunal members who assess the patient, may certify that it is in the patient's best interests to excuse him or her from attending the hearing. In all other cases the patient shall be present throughout the review tribunal hearing.

Appendix 4: Inquiries under Section 95

The decision-making process for initiating inquiries under section 95 and the standard procedure the Director of Mental Health uses when dealing with an inquiry report are outlined below.

A4.1 Initiating inquiries

A4.1.1 Although the Act gives District Inspectors the power to initiate an inquiry without the approval of the Director of Mental Health, at the beginning of 1997 District Inspectors were asked to consult with the Director or Deputy Director of Mental Health before initiating an inquiry under section 95 of the Act.

A4.1.2 When considering whether such an inquiry is necessary, the Director of Mental Health considers the following factors:

- whether the matter falls within the scope of section 95 of the Act
- the seriousness of the incident
- whether an internal investigation or any other inquiry (eg, by the Health and Disability Commissioner) has been or is being conducted
- the adequacy of any internal investigation (eg, whether an external reviewer has been involved)
- whether there are any outstanding issues from an internal investigation or other inquiry
- the level of public interest or perception (eg, the public perception that a hospital or service is responsive to concerns raised)
- the level of political concern.

A4.1.3 A District Inspector inquiry is usually the least intrusive option for investigating an incident. However, the key consideration is whether an internal investigation has occurred and whether or not that investigation has covered all relevant issues.

A4.1.4 There have been a number of critical incidents recently where a District Inspector inquiry has not been conducted. These were adequately addressed by internal inquiries, which made use of external reviewers. Although the Director of Mental Health was involved in all of these cases, it was not necessary to instigate an independent inquiry under section 95 of the Act.

A4.2 Process for the inquiry

- A4.2.1 The Director of Mental Health will set the terms of reference for an inquiry after seeking advice from the Ministry of Health's legal advisors and consulting with the provider concerned.
- A4.2.2 At times the Director of Mental Health will appoint a District Inspector from another region to conduct an inquiry in order to preserve the relationship between the local District Inspector and the service. The Director of Mental Health may appoint a suitable clinician to assist the District Inspector with his or her investigations if this is considered necessary. The District Inspector may seek advice from the Ministry on issues of natural justice and process, but the format and process for the inquiry is ultimately the District Inspector's decision. The format may vary from a small scale informal examination of the issues to a more formal process with all parties having legal representation.
- A4.2.3 It is important to note that the Director of Mental Health and Ministry of Health do not see the inquiry report (or any drafts) until the inquiry is complete.

A4.3 Director of Mental Health: standard procedure for dealing with section 95 inquiry reports

- A4.3.1 The Director of Mental Health reads the report and consults with other staff members within the Ministry of Health. These may include the Deputy Director of Mental Health, Chief Advisors (Medical and Nursing), Chief Legal Advisor, and Director-General of Health.
- A4.3.2 The Director of Mental Health then sends a copy of the report to the hospital (or other provider) and seeks comments within a set timeframe. In particular, the hospital or service is asked how it intends to address any recommendations made.
- A4.3.3 Depending on the issues raised in the report, copies may be sent to the Health Funding Authority (ie, if there are specific purchase issues) or the Crown Company Monitoring Advisory Unit with a request for comments.
- A4.3.4 A copy of the report and a briefing may be sent to the Minister of Health.
- A4.3.5 Upon receipt of the comments, the Director of Mental Health will negotiate any action that needs to be undertaken by the parties involved to implement the recommendations in the report or to address any specific problems identified.
- A4.3.6 A briefing on the outcome may be sent to the Minister of Health if required.
- A4.3.7 Copies of the report or findings and recommendations may be sent to affected parties as judged appropriate by the Director of Mental Health.

A4.4 Public and media interest

- A4.4.1 Some incidents requiring inquiry will naturally raise considerable media and/or public interest. The Director of Mental Health may receive an Official Information Act 1985 (the Official Information Act) request for a copy of the report before the completed report has been submitted. Such a request becomes active upon receipt of the report. The Director is then bound to consider the release of the report under the Official Information Act and may only withhold information in line with the provisions of the Official Information Act. This decision involves the balancing of the public interest in a public release of the report against the public interest in protection of confidentiality interests of any individual named or adversely affected by the report.
- A4.4.2 The Director of Mental Health usually seeks to co-ordinate a public release and any media statements with the provider involved and with any other affected parties. This allows the service to make its own media statement regarding its progress on implementing recommendations or any matters it wishes to clarify. The Ministry of Health Communications Section works closely with other parties involved in the inquiry to co-ordinate media statements and public releases.
- A4.4.3 Findings of any section 95 inquiry and, if requested, a copy of the inquiry report that complies with the provisions of the Official Information Act is shared with the Health and Disability Commissioner.

Appendix 5: Steps to Follow in Order to Comply with the Health Information Privacy Code when Conducting Inquiries under Sections 75 or 95

- A5.1 Health information is information about the physical or mental health of, or the care and treatment provided to, an identifiable service recipient.
- A5.2 This appendix summarises Health Information Privacy Rule 3 of the Code.
- A5.3 During both section 75 investigations and section 95 inquiries, when collecting health information either directly from the individual service user concerned, or from the individuals' representative, the District Inspector shall take such steps as are, in the circumstances, reasonable to ensure that the individual concerned (and their representative if information is collected from their representative) is aware that:
- the health information is being collected
 - it is being collected as part of the District Inspector's process of investigation or inquiry into whichever of the following is applicable:
 - a complaint of a breach of the service user's rights
 - a possible breach of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or regulations made under it
 - a possible breach of duty by an officer or employee in the hospital or service
 - a matter pertaining to the service user or the management of the hospital or service
 - the intended recipient(s) of the information are the complainant, the patient (if they are not the same), the Director of Area Mental Health Services, and the Director of Mental Health
 - the information will be kept confidentially by the District Inspector, then may be contained within the official report and given to the Director of Area Mental Health Services, the Director of Mental Health and the manager or chief executive of the hospital or service
 - providing this information to District Inspectors is mandatory, under section 99(a) of the Mental Health (Compulsory Assessment and Treatment) Act 1992. For section 75 investigations, if the service user does not provide information to the District Inspector, they might not be able to properly investigate the complaint. For section 95 inquiries, the District Inspector will generally have the powers of a Commission of Inquiry, which include a power to subpoena and examine on oath.
- A5.4 Service users and/or representatives should be advised of these facts before information is collected by the District Inspector, or as soon afterward as is practicable. This should be done in a manner which will make the advice easily understood.
- A5.5 Where similar information has been collected from that person for the same or a related purpose on a recent occasion, it is not necessary to repeat this advice.

A5.6 It is not necessary for the District Inspector to advise the service user and/or service user's representative of these facts when collecting information if the District Inspector believes on reasonable grounds:

- that advising them would prejudice the interests of the individual concerned or prejudice the purposes of collection (the District Inspector's investigation)
- that advising them is not reasonably practicable in the circumstances of the particular case or
- that not advising them is necessary to avoid prejudice to the maintenance of the law, including the prevention, detection, investigation, prosecution, and punishment of offences.

Appendix 6: Reporting Requirements

To gain more clarity on work carried out by District Inspectors under various sections of the Act, the Ministry of Health requires that District Inspectors report using a standard format. Two sample report formats are shown below, the one most appropriate to the individual's style of work to be chosen. Tasks should be listed by date or type, and the total of the units should be referred to in the GST invoice that accompanies the report.

Sample Report	
What	Units

Date	
Correspondence in	2
Telephone patient xxxx	2
Visited hospital xxxx	35
Date	
Telephone	2
Court	3
Correspondence out	2
Section 75 complaint	8
Section 95 complaint	
Date	
Perusing section xx certificates	6
Telephone discussion DDMH	3
Total units	63

Alternatively

Re: patient xx	10
Re: patient xx	7
Attendance with respect to section xx certificates	12
Attendance with respect to section xx certificates	14
Miscellaneous certificates	16
Meetings	13
Section 75 complaint	6
Section 95 complaint	
Total units	76

Appendix 7: Invoicing Requirements

To gain more clarity on work carried out by District Inspectors under various sections of the Mental Health (Compulsory Assessment and Treatment) Act 1992, the Ministry of Health asks that District Inspectors invoice in the following format. Original invoices are retained as financial records after they have been approved for payment and should therefore contain no personal or confidential information.

Sample Summary GST Invoice to be submitted by District Inspectors		
District Inspector duties (*) XX hours @ \$150	=	XX.XX
Travel (*) XX hours @ \$75	=	XX.XX
GST	=	XX.XX
Subtotal	=	\$XX.XX
Plus disbursements		
Listed as usual (including mileage @ \$0.62 per km)	=	XX.XX
Now due	=	\$XX.XX

NB: (*) These hours should relate to the units in the main body of the report.

Note: Section 75/95 investigations should be itemised and invoiced on separate accounts.

Note: Original invoices are held in Corporate Finance section after they have been approved for payment and should therefore contain no personal or confidential information.