

**Victim Notification
Guidelines for Directors of
Area Mental Health
Services and DHB Victim
Notification Co-ordinators**

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Preface

These updated victim notification guidelines are to assist Directors of Area Mental Health Services (DAMHS), District Health Board victim notification co-ordinators (Co-ordinators) and others in mental health services and secure facilities who administer the Victims' Rights Act 2002 (VRA) part 3 notification requirements. These victim notification guidelines replace the guidelines that were issued in April 2000 as section 33 of the *Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992*.

These victim notification guidelines apply to the small number of VRA notifications that need to be made in relation to persons detained in a hospital or care facility under relevant criminal procedure legislation. The majority of VRA notifications will be carried out by the Department of Corrections in the criminal justice sector.

In consultation with the Ministry of Health, forensic mental health services have established systems to ensure compliance with the provisions of the VRA. These systems build on those established when section 11A of the Victims of Offences Act 1987 came into effect in 2000.

DAMHS and co-ordinators should always refer to the VRA for further guidance on any matter.¹ However, questions or feedback on these guidelines can be directed to the Director of Mental Health or the Mental Health Rights and Protection Team at the Ministry of Health.

Stephen McKernan
Director-General of Health

¹ Available at <http://www.legislation.govt.nz>. Some sections from legislation mentioned in these guidelines are included in Appendix 3.

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1 Definitions

- 1.1 **Directors of Area Mental Health Services (DAMHS)** are responsible for the administration of the Victims' Rights Act 2002 (VRA).
- 1.2 **Generic information** is non-specific information about the treatment pathways that patients of a particular type may follow. It does not divulge specific information about a particular patient.
- 1.3 **Hospital** has the same definition as under section 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992.
- 1.4 **Patient** means, usually, a person who is an **offender** for the purposes of section 4 of the VRA, and is detained in a hospital or care facility under the Criminal Procedure (Mentally Impaired Persons) Act 2003, the Summary Proceedings Act 1957, the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 or other criminal procedure legislation.²
- 1.5 **Secure facility** has the same meaning as under section 9(2) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.
- 1.6 **Compulsory Care Co-ordinator** has the same meaning as under section 5(1) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.
- 1.7 **Unescorted leave** means leave from the hospital grounds as defined by the District Health Board.³
- 1.8 **Victim** means a person who has registered as a victim with the New Zealand Police.
- 1.9 **Victim Notification Co-ordinators ('Co-ordinators')** are responsible for administering the victim notification system on behalf of the DAMHS and for carrying out the notifications specified in the VRA. The Co-ordinator ensures that all notifications comply with the VRA, while the DAMHS authorise VRA notifications.

² 'Patient' and 'offender' are used interchangeably throughout these guidelines but, where possible, 'patient' has been used to differentiate a person in secure care from a person detained in a penal institution.

³ District Health Boards have discretion to define the boundaries of their hospital grounds.

2 Principles

- 2.1 Relevant principles are to be found in part 2 of the VRA.
- 2.2 DAMHS and co-ordinators and all other persons operating under the VRA must treat victims of offences with courtesy, compassion and respect for their dignity and privacy.
- 2.3 DAMHS and co-ordinators should ideally be aware of welfare, health, counselling, medical and legal services available to victims and be able to direct them to appropriate services when necessary.⁴
- 2.4 DAMHS and co-ordinators are responsible for ensuring that information about victims remains confidential, and information given to victims about patients is limited either to that prescribed under the VRA or to generic information.⁵
- 2.5 Any meetings between offenders and victims to resolve issues relating to an offence must be appropriate in all the circumstances.

3 Delegations

- 3.1 The Director-General of Health may delegate VRA part 3 victim notification powers either to DAMHS with responsibilities for forensic mental health services, or to compulsory care co-ordinators in relation to patients detained in secure facilities.⁶
- 3.2 DAMHS are responsible for appointing co-ordinators.
- 3.3 DAMHS and co-ordinators should consider nominating a person to carry out the tasks of the co-ordinator where the co-ordinator is unable to do so.⁷
- 3.4 Under section 40 of the VRA, a victim may appoint a representative to receive VRA notifications on his or her behalf.

⁴ See sections 8 and 11 of the VRA.

⁵ Information about individuals is subject to the Privacy Act 1993 and specifically, in the case of patients, the Health Information Privacy Code 1994.

⁶ See section 52 of the VRA.

⁷ The person nominated will need to be able to access relevant information.

4 General Information to be Given to Victims

- 4.1 DAMHS or co-ordinators or both must provide a victim or other affected person with information about any programmes, remedies or services available to them through the District Health Board.⁸
- 4.2 DAMHS or co-ordinators or both must notify victims, in writing, of the need for victims to advise the mental health service of any change in their address.
- 4.3 DAMHS or co-ordinators or both should consider providing victims with generic information about care pathways before victims are notified of changes in patients' status.

5 General Information to be Given to Patients

- 5.1 District Health Board mental health services should consider providing generic information about the VRA to all patients who could become subject to notification requirements.
- 5.2 At the discretion of a patient's responsible clinician or compulsory care co-ordinator, and whilst maintaining a victim's confidentiality, a specific patient may be told that she or he is subject to the victim notification requirements of the VRA.⁹

6 Information Keeping

- 6.1 Co-ordinators must keep permanent records of a victim's address information, including all changes of address.
- 6.2 Co-ordinators must keep records of all notifications made under the VRA, and DAMHS must report quarterly on all notifications to the Director of Mental Health.

⁸ See section 11 of the VRA.

⁹ Information that could be discussed with a patient includes general information about the VRA, when notifications may occur, and when notifications will cease.

7 Confidentiality

- 7.1 A victim's confidentiality must be maintained at all times, especially in respect of the offender or alleged offender.
- 7.2 A patient's confidentiality must be maintained at all times, subject to the exceptions provided for in the notification provisions of the VRA.
- 7.3 DAMHS and co-ordinators must establish and maintain systems that do not allow any information about victims to be accessed by patients or any other unauthorised person.
- 7.4 Confidentiality may be waived by the parties to whom it applies.

8 Patients to Whom Notification Requirements Apply

- 8.1 The following patients or care recipients are subject to section 37 notifications under the VRA (where there is a registered victim):
 - special patients as defined in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992
 - special care recipients as defined in section 6(2) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003
 - persons subject to court orders made under sections 25(1)(a), 25(1)(b) or 34(1)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003.
- 8.2 Patients or care recipients are subject to section 38 notifications under the VRA where there is a registered victim and patients were liable to detention in a hospital or facility:
 - following an application under section 45(2) or an arrangement under section 46 of the Mental Health (Compulsory Assessment and Treatment) Act; or
 - following an application under section 29(1) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act; or¹⁰
 - pursuant to an order under section 34(1)(a) of the Criminal Procedure (Mentally Impaired Persons) Act; and

¹⁰ Consideration should also be given by DAMHS to those transferring or being removed from the Mental Health (Compulsory Assessment and Treatment) Act to Intellectual Disability (Compulsory Care and Rehabilitation) Act under 47A Mental Health (Compulsory Assessment and Treatment) Act.

- patients cease to be special patients under section 48 of the Mental Health (Compulsory Assessment and Treatment) Act or special care recipients under section 69 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act.¹¹

9 Notifications

- 9.1 All notifications should be in writing or, if urgent, be given in the first instance by telephone.
- 9.2 If possible, notifications should be given 10 days in advance of a planned event occurring.
- 9.3 Information given to victims about patients should be limited to that prescribed under the VRA, unless a patient has waived confidentiality in respect of the information. Details about a patient's accommodation, leave conditions or care will not otherwise be appropriate to include in notifications.
- 9.4 VRA notification requirements no longer apply once a victim is notified of a patient's discharge or change of legal status.

10 Section 37 Notifications

Notice of escape

- 10.1 A victim must be notified (by telephone and followed up in writing) of the escape or absence of a patient from the hospital grounds without approved leave.
- 10.2 Co-ordinators should inform a victim as soon as practicable when a patient is again detained after escaping or being absent from the hospital grounds without approved leave.

¹¹ Refer to Appendix 2 for the full text of each of these sections.

Notice of first unescorted leave of absence

- 10.3 A victim should be informed of a patient's first unescorted leave under:
- sections 31, 50 or 52 of the Mental Health (Compulsory Assessment and Treatment) Act; or
 - sections 65 to 67 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act.

Notice of death of a patient

- 10.4 A victim should be informed of a patient's death, irrespective of whether the death occurred within or outside a facility.
- 10.5 It is inappropriate to divulge any information about the circumstances of a patient's death.

Notice of impending discharge

- 10.6 A victim should be notified of a patient's impending discharge or change of legal status.¹²

11 Section 38 Notification Requirements

- 11.1 Where persons in the section 38 categories outlined above in part 8 of these guidelines cease to be special patients or special care recipients, the DAMHS must notify the victim that the patient is no longer liable to detention for the sentence imposed for an offence.¹³

¹² A change of legal status is considered discharge for the purpose of these guidelines. Appendix 1 outlines examples of discharges that should be notified to victims.

¹³ Under former guidelines, when a patient had his or her sentence expire while detained in a mental health service, this was classified as an impending discharge. Section 38 of the VRA now covers these notifications, and effectively involves a notification that the victim will not be receiving further notifications about the patient.

Appendix 1: Examples of Notifiable Discharges and Changes of Status

The following are some examples of discharges that should be notified to victims:

- where a special patient or special care recipient subject to section 24(2) of the Criminal Procedure (Mentally Impaired Persons) Act is no longer unfit to stand trial and is directed by the Attorney-General to be brought before the appropriate court or to be held as a patient under section 31(2) of that Act
- where a special patient or special care recipient detained subject to section 24(2) of the Criminal Procedure (Mentally Impaired Persons) Act, although still unfit to stand trial, is directed by the Minister of Health to be held as a patient or as a care recipient if, in the Minister's opinion, detention as a special patient is no longer necessary (under section 31(3) of that Act)
- where the maximum period for detention has expired in respect of a special patient found unfit to stand trial, and the Attorney-General directs that the person be held as a patient (section 31(4) of the Criminal Procedure (Mentally Impaired Persons) Act)
- where a special patient or special care recipient subject to section 24(2)(a) of the Criminal Procedure (Mentally Impaired Persons) Act, having been acquitted on account of insanity, is directed by the Minister of Health to be held as a patient subject to a compulsory treatment order under the Mental Health (Compulsory Assessment and Treatment) Act or to be discharged (section 33(3)(b) of the Criminal Procedure (Mentally Impaired Persons) Act)
- where a special patient or a special care recipient becomes no longer liable to detention for a sentence imposed. Section 48 of the Mental Health (Compulsory Assessment and Treatment) Act and section 69 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act apply respectively to cessation of liability to detention for sentences imposed
- where a patient subject to court orders made under sections 25(1)(a), 25(1)(b) or 34(1)(b) of the Criminal Procedure (Mentally Impaired Persons) Act is no longer subject to treatment as an inpatient.

There may be other instances where a patient's or care recipient's discharge or change of status is notifiable under the VRA to the relevant victim. When determining whether a particular discharge is subject to the provisions of the VRA, co-ordinators and DAMHS should consider:

- part 3 of the VRA
- the requirements of section 38 of the VRA.

Appendix 2: Relevant Legislation

Victims' Rights Act 2002

Section 37: Notice of discharge, leave of absence, or escape or death of accused or offender who is compulsorily detained in hospital [or facility]

- (1) Without limiting sections 29 and 31, this section applies to a victim only if the person accused of the offence or, as the case requires, the offender, is liable to be detained in a hospital [or facility] in connection with the offence and, when his or her liability of that kind began, he or she was liable to be detained in a hospital [or facility] –
 - (a) as a special patient as defined in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 [or as a special care recipient as defined in section 6(2) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003]; or
 - (b) under an order made under [section 25(1)(a) or (b) or section 34(1)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003].
- (2) The Director-General of Health must give a victim to whom this section applies –
 - (a) reasonable prior notice of an impending discharge of the person or offender; and
 - (b) reasonable prior notice of the first unescorted leave of absence granted to the person or offender –
 - [(i) under section 31 or section 50 or section 52 of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or]
 - [(ii) under any of sections 65 to 67 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; and]
 - (iii) *Repealed*.
 - (c) notice, as soon as practicable, of every escape by the person or offender; and
 - (d) notice, as soon as practicable, of the death (whether within or outside a hospital [or facility]) of the person or offender.

Section 38: Exception to section 37 once certain offenders no longer liable to detention for sentence imposed for offence

- (1) This section applies if an offender referred to in section 37 –
 - (a) was, when his or her liability to detention in a hospital or facility began, liable to be detained –
 - (i) following an application under section 45(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992, or under an arrangement under section 46 of that Act; or
 - (ii) following an application under section 29(1) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or

- (iii) under an order under section 34(1)(a) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; and
 - (b) ceases, under section 48 of the Mental Health (Compulsory Assessment and Treatment) Act 1992, to be a special patient within the meaning of that Act or ceases, under section 69 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, to be a special care recipient within the meaning of that Act.]
- (2) If this section applies, the Director-General of Health must, instead of complying with section 37(2), give the victim notice, as soon as practicable, that the offender is no longer liable to detention for the sentence imposed for the offence.

Mental Health (Compulsory Assessment and Treatment) Act 1992

Hospital –

- (a) means premises that –
 - (i) are used to provide hospital mental health care in accordance with section 9 of the Health and Disability Services (Safety) Act 2001; or
 - (ii) are not yet used, but are intended to be used, to provide hospital mental health care, and are occupied by a person certified under that Act to provide hospital mental health care;
 but where only parts of any premises are used (or intended to be used) to provide hospital mental health care, means only those parts; and
- (b) at a time before 1 October 2004, includes premises licensed or deemed to be licensed as a psychiatric hospital pursuant to Part 5 of the Hospitals Act 1957.

Special patient means –

- (a) a person who is liable to be detained in a hospital under an order made under –
 - (i) section 24(2)(a) or section 38(2)(c) or section 44(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
 - (ii) section 171(2) of the Summary Proceedings Act 1957; or
- (b) a person who is remanded to a hospital under section 23 or section 35 of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
- (c) a person who is liable to be detained in a hospital under section 34(1)(a)(i) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, and who has not ceased, under section 48 of this Act, to be a special patient; or
- (d) a person who is liable to be detained in a hospital, either following an application under section 45(2) or arrangements made under section 46, and who has not ceased, under section 48, to be a special patient; or
- (e) a person who, in accordance with section 136(5)(a) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, must be held as a special patient.

Section 31: Leave for inpatients

- (1) This section shall apply to every patient, other than a special patient, who is in a hospital in accordance with an inpatient order.
- (2) The responsible clinician may from time to time grant to any patient to whom this section applies leave of absence from the hospital for such period not exceeding three months, and on such terms and conditions, as that clinician thinks fit.
- (3) The responsible clinician may from time to time extend any such period of leave for a further period not exceeding three months at any one time; but no patient shall be on leave under this section for a continuous period of more than six months.
- (4) The responsible clinician may, at any time during the period of leave granted under this section to any patient, cancel the leave by notice in writing to the person who has undertaken to take care of the patient during the period of leave, or, if there is no such person, by notice in writing to the patient.
- (5) Where leave is cancelled, the patient may be taken to the hospital, or to any other hospital, by any duly authorised officer acting under the authority of the Director of Area Mental Health Services, or by any person to whom the charge of the patient has been entrusted during the period of leave.

Section 45: Application for assessment may be made in respect of persons detained in [prisons]

- (1) In this section, unless the context otherwise requires, –
Institution means –
 - (a) A [prison]; and
 - (b) A certified institution under the Alcoholism and Drug Addiction Act 1966:**Superintendent**, –
 - (a) In relation to a [prison, means the manager of that prison]; and
 - (b) In relation to a certified institution under the Alcoholism and Drug Addiction Act 1966, means the chief resident officer of that institution.
- (2) The superintendent of an institution, or any other officer of the institution authorised by the superintendent, may make an application under section 8A in respect of a person detained in the institution if the superintendent has reasonable grounds to believe that the person may be mentally disordered ...
- (3) An application under subsection (2) is dealt with under Parts 1 and 2, subject to the following provisions:
 - (a) If the detained person is already subject to the process described in sections 9 to 16, he or she remains subject to that process;
 - (b) If the detained person is already subject to a compulsory treatment order, and section 36 does not apply to the order, he or she remains subject to the order;

- (c) If neither paragraph (a) nor paragraph (b) applies to the detained person, Parts 1 and 2 apply to the application but must be read subject to any necessary modifications and to the modifications in subsection (4).]
- (4) [The modifications referred to in subsection (3)(c) are as follows]:
- (a) The assessment examination shall take place either –
 - (i) In the institution within 48 hours after the receipt of the application; or
 - (ii) If that is not practicable, in a hospital within 72 hours after the receipt of the application;
 - (b) Where the assessment examination is to be conducted in a hospital, the detained person may be removed by or under the direction of the superintendent [or manager] of the institution to the hospital for the purposes of the assessment examination, and may in like manner be taken back to the institution;
 - (c) Where the detained person is removed under paragraph (b) of this subsection from a [prison], –
 - (i) That person shall not be detained in the hospital overnight, except in accordance with a notice of a kind referred to in paragraph (d) of this subsection; and
 - (ii) Unless and until such a notice is given, that person shall be deemed to continue to be in the legal custody [of the person in whose custody he or she was under the Corrections Act 2004] notwithstanding that the person is absent from the institution;
 - (d) Where the certificate of preliminary assessment contains a finding of the kind described in section 10(1)(b)(ii) of this Act, the medical practitioner giving the certificate shall give a notice in accordance with section 11(1) of this Act, directing that the person be admitted to and detained in a specified hospital for the purposes of assessment and treatment throughout the first period of assessment and treatment; and, where the assessment interview was conducted in the institution, that notice shall be sufficient authority for the removal of the detained person from the institution to the hospital;
 - (e) On the giving of the notice referred to in paragraph (d) of this subsection in respect of any person who was detained in a [prison, that person is deemed to have ceased to be in legal custody under the Corrections Act 2004];
 - (f) If the certificate of further assessment contains a finding of the kind described in section 12(1)(b)(ii) of this Act, the responsible clinician giving the certificate shall give a notice in accordance with section 13(1) of this Act, directing that the person be admitted to and detained in a specified hospital for the purposes of assessment and treatment during the second period of assessment and treatment;
 - (g) The Court shall not make a community treatment order in respect of the person.

- (5) Neither the making of an application under subsection (2) nor the making of a compulsory treatment order, in relation to a person detained in a [[prison]], prevents the bringing of the person before a court for hearing or trial, or operates to delay the hearing or trial.

Section 46: Detained persons in need of care and treatment

If it appears to the [chief executive of the Department of Corrections] that any person who is detained in a [prison], whether or not that person is mentally disordered, would benefit from psychiatric care and treatment available in a hospital but not available in the institution in which the person is detained, the [chief executive of the Department of Corrections] may, with the consent of that person, make arrangements with the Director for the person to be admitted to and detained in that hospital, and, subject to section 50 of this Act, the person shall be so detained accordingly.

Section 48: Relationship between detention in hospital and sentence

- ... (d) liability to detention under a sentence ceases on the earliest of the following dates:
- (i) the date specified in an order of the New Zealand Parole Board that the person be released on parole or compassionate leave;
 - (ii) the release date (if any) of the person's sentence, as defined under Part 1 of the Parole Act 2002;
 - (iii) the date on which the sentence is determined.

Section 50: Leave of special patients

- (1) Subject to subsection (2) of this section, if two medical practitioners certify that a person who is detained in a hospital as a special patient acquitted on account of insanity or pursuant to an order made under section 45 of this Act or pursuant to section 46 of this Act [or under section 34(1)(a)(i) of the Criminal Procedure (Mentally Impaired Persons) Act 2003] is fit to be allowed to be absent from the hospital, the Minister may grant leave of absence from the hospital on such conditions as the Minister thinks fit, including (at the Minister's discretion) a condition that the person will return to the hospital on such date or within such period as the Minister may specify.
- (2) The power to grant leave under this section shall not be exercised in respect of any person who –
- (a) Was, immediately before his or her admission to the hospital, detained in a [prison] while awaiting or during the course of a trial or hearing before any court or while awaiting sentence by any court or pending the determination of any appeal to any court against conviction; or
 - (b) Is subject to a sentence of imprisonment for life or to a sentence of preventive detention.

- (3) The Minister may, at any time during any period of leave granted under this section to any patient, cancel that leave; and in any such case the Director shall, in writing under his or her hand, direct that the patient be admitted or re-admitted to a specified hospital.
- (4) In any case to which subsection (3) of this section applies, the patient may be taken to the specified hospital by the Director, or by the Director of Area Mental Health Services, or by a duly authorised officer, or by any member of the Police, or by any person to whom the charge of the patient has been entrusted during the period of leave.
- (5) If the specified hospital is not the one from which the patient was on leave, the patient shall be received and detained there as if he or she had been transferred to that hospital pursuant to section 49 of this Act.

Section 52: Director may grant short-term leave

- (1) Subject to subsection (2) of this section but notwithstanding any other provision of this Act, the Director may, subject to such conditions as the Director thinks fit, grant to any special patient leave of absence from the hospital in which the patient is detained for any period not exceeding seven days, exclusive of the days of the patient's departure and return.
- (2) The power to grant leave under this section shall not be exercised in respect of any patient described in section 50(2)(a) of this Act.
- (3) The Director may, at any time during the period of leave granted under this section to any patient, cancel the leave; and, in any such case, the provisions of subsections (3) to (5) of section 50 of this Act shall apply with any necessary modifications.
- (4) With the authority of the Director and subject to such conditions as the Director may impose, the Director of Area Mental Health Services may, after consultation (in the case of a patient who is detained in hospital pursuant to an order made under section 45 of this Act or pursuant to section 46 of this Act) with the [manager] of the appropriate [prison], exercise in any particular case the powers conferred on the Director by this section.

Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

Section 5(1): [Compulsory care] co-ordinator means a compulsory care co-ordinator appointed under section 140; and in relation to a function, duty, or power, means the person appointed under that section who is responsible for the geographical area in which the function is to be performed, or the duty or power is to be exercised.

Section 6: Meaning of care recipient and related terms

...

- (2) Special care recipient means –
- (a) a person who is liable to be detained in a secure facility under an order made under –
 - (i) section 24(2)(b) or section 38(2)(c) or section 44(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
 - (ii) section 171(2) of the Summary Proceedings Act 1957; or
 - (b) a person who is remanded to a secure facility under an order made under section 23 or section 35 of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
 - (c) a person who is liable to be detained in a secure facility under an order made under section 34(1)(a)(ii) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 and who has not ceased, under section 69(3), to be a special care recipient; or
 - (d) a person who –
 - (i) is liable to be detained in a secure facility under a compulsory care order, made under section 45; and
 - (ii) is also liable to detention under a sentence; and
 - (iii) has not ceased, under section 69(3), to be a special care recipient; or
 - (e) [a prisoner] who is required, under section 35, to stay in a facility; or
 - (f) a person who, in accordance with section 47A(5) of the Mental Health (Compulsory Assessment and Treatment) Act 1992, must be held as a special care recipient.

Section 9: Meaning of facility and secure facility

...

- (2) A **secure facility** is a facility that–
- (a) has particular features that are designed to prevent persons required to stay in the facility from leaving the facility without authority; and
 - (b) is operated in accordance with systems that are designed to achieve that purpose.

Section 29: Application for assessment of [prisoner] or former special patient

- (1) A [manager] of a prison may apply to the co-ordinator to have [a prisoner] assessed under this subpart, if there are reasonable grounds for believing that [the prisoner] has an intellectual disability.
- (2) A Director of Area Mental Health Services under the Mental Health (Compulsory Assessment and Treatment) Act 1992 may apply to the co-ordinator to have a former special patient assessed under this subpart, if there are reasonable grounds for believing that the patient has an intellectual disability.

- (3) A [manager] may authorise any staff member of the prison to make the application referred to in subsection (1).

Section 45: Jurisdiction to make compulsory care order

- (1) The Family Court may, on an application of the co-ordinator, make a compulsory care order in respect of a proposed care recipient if the court is satisfied that the proposed care recipient –
 - (a) has an intellectual disability; and
 - (b) has been assessed under subpart 1 and Part 3; and
 - (c) is to receive care under a care programme completed under section 26.
- (2) On an application under subsection (1) relating to a former special patient, the court must consider and determine whether he or she must receive supervised care or secure care.
- (3) The court may order that a former special patient receive secure care only if it considers that supervised care would pose a serious danger to the health or safety of the care recipient or of others.

Section 65: Care manager may grant leave

- (1) Where a care recipient no longer subject to the criminal justice system is required to stay in a facility, the care manager in charge of the facility may authorise the care recipient to be on leave from the facility for a period of not more than two weeks on any terms and conditions that the care manager specifies.
- (2) The care manager may extend the period of authorised leave for a further period of not more than two weeks; but no care recipient may be absent under this section for a continuous period of more than four weeks.
- (3) The care manager may, at any time during the period of leave, cancel the leave by notifying the person who has undertaken the care of the care recipient during the period of leave or, if there is no such person, by notifying the care recipient.

Section 66: Minister may authorise leave for special care recipients

- (1) The Minister may authorise a special care recipient to be on leave from the care recipient's secure facility on any terms and conditions that the Minister specifies, if a specialist assessor certifies that the care recipient is fit to be on leave.
- (2) The Minister may (at the Minister's discretion) include in the conditions specified under subsection (1) a condition that the care recipient return to the secure facility on a specified date or within a specified period.
- (3) No care recipient may be on leave, authorised under this section, if the care recipient –
 - (a) is charged with, or convicted of, an offence, and –
 - (i) a trial or hearing of that offence is to take place; or
 - (ii) the care recipient is to be sentenced for that offence; or

- (iii) an appeal in respect of that offence is pending; or
 - (b) is subject to a sentence of imprisonment for life or to a sentence of preventive detention.
- (4) The Minister may, at any time during a period of leave authorised under this section, cancel that leave by notifying the person who has undertaken the care of the care recipient during the period of leave or, if there is no such person, by notifying the care recipient.

Section 67: Director-General may authorise short-term leave

- (1) The Director-General of Health may authorise a special care recipient to be on leave, from the secure facility in which the care recipient is detained, for a period of not more than seven days on any terms and conditions that the Director-General specifies.
- (2) The power to authorise leave under this section may not be exercised in respect of a care recipient described in section 66(3).
- (3) The Director-General of Health may, at any time during a period of leave authorised under this section, cancel that leave by notifying the person who has undertaken the care of the special care recipient during the period of leave or, if there is no such person, by notifying the care recipient.
- (4) With the authority of the Director-General and subject to any conditions that the Director-General may impose, the co-ordinator may exercise in any particular case the powers conferred on the Director-General by this section.
- (5) Before the co-ordinator exercises a power under subsection (4) in respect of a care recipient who, following an application under section 29, has been transferred from a prison, the co-ordinator must consult with the [manager] of that prison.

Section 69: Relationship between detention in secure facility and sentence

- (1) This section applies to a person who is liable to detention under a sentence, and also liable to detention in a secure facility –
 - (a) in accordance with a compulsory care order made under section 45; or
 - (b) in accordance with an order under section 34(1)(a)(ii) of the Criminal Procedure (Mentally Impaired Persons) Act 2003.
- (2) The term of a sentence applicable to a person to whom this section applies –
 - (a) continues to run while the person is in a secure facility, or is on authorised leave from the secure facility; and
 - (b) ceases to run if he or she escapes from the secure facility before his or her liability to detention under the sentence ceases; and
 - (c) does not begin to run again until the person is retaken.

- (3) The person ceases to be detained as a special care recipient on the date on which he or she ceases to be liable to be detained under any sentence and, –
 - (a) if on that date he or she is subject to a compulsory care order made under section 45, he or she remains subject to the compulsory care order;
 - (b) if on that date he or she is subject to an order under section 34(1)(a)(ii) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, then for the purposes of this Act that order becomes a compulsory care order under section 45 that must be regarded as having been made on that date in respect of that person for a term of six months.
- (4) To avoid doubt, a compulsory care order resulting from the operation of subsection (3)(b) may be varied and extended under this Act.

Criminal Procedure (Mentally Impaired Persons) Act 2003

Section 25: Alternative decisions in respect of defendant unfit to stand trial or insane

- (1) If, after considering the matters specified in section 24(1)(a) and (b) concerning a defendant found unfit to stand trial or acquitted on account of his or her insanity, the court is not satisfied that an order under section 24(2) is necessary, the court must deal with the defendant –
 - (a) by ordering that the defendant be treated as a patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - (b) by ordering that the defendant be cared for as a care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or
 - (c) if the person is liable to be detained under a sentence of imprisonment, by deciding not to make an order; or
 - (d) by ordering the immediate release of the defendant.

Section 34: Powers of court to commit offender to hospital or facility on conviction

- (1) If the court is satisfied of the matters specified in subsection (2), the court may deal with an offender who is convicted of an imprisonable offence –
 - (a) by sentencing the offender to a term of imprisonment and also ordering that the offender –
 - (i) be detained in a hospital as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - (ii) be detained in a secure facility as a special care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or

- (b) instead of passing sentence, by ordering that the offender –
 - (i) be treated as a patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - (ii) be cared for as a care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.