

# **Guideline on the Role and Function of Authorised Officers Appointed Under the Substance Addiction (Compulsory Assessment and Treatment) Act 2017**

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## Disclaimer

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

These guidelines have been issued by the Director-General of Health, pursuant to section 116 of the Substance Addiction (Compulsory Assessment and Treatment) Act 2017.

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## **Use of the word ‘patient’**

The preferred language for referring to someone receiving addiction treatment varies, and includes ‘client’, ‘service user’ and ‘tangata whaiora’. The Substance Addiction (Compulsory Assessment and Treatment) Act (the Act) uses the word ‘person’ to refer to an individual prior to a compulsory treatment certificate being issued.

Once a compulsory treatment certificate is issued, the Act uses the word ‘patient’.

This guideline uses the language of the Act, while acknowledging that people who use or provide addiction treatment services rarely use the term ‘patient’. Where the word ‘patient’ is used, it refers only to people subject to compulsory treatment.

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# Introduction

## Introduction

Section 116 of the Substance Addiction (Compulsory Assessment and Treatment) Act 2017 (the Act) states that the Director-General of Health may issue guidelines for the purposes of the Act. This document provides guidance to health professionals<sup>1</sup> designated by Directors of Area Addiction Services (Area Directors) to carry out the functions of authorised officers.

Any person over the age of 18 can apply to have a person assessed under the Act and may choose to ask an authorised officer for advice or assistance. Authorised officers are often the first point of contact for people who have concerns about someone who may have a severe substance addiction. Health professionals acting as authorised officers need to balance therapeutic approaches, the views of family, whānau and friends of people with severe substance addiction, the views of the individual with severe substance addiction, and the requirements of the Act.

This guideline sits alongside the other guidance relating to the Act, including:

- *Introductory Guideline to the Substance Addiction (Compulsory Assessment and Treatment) Act 2017*
- *Protocol on Capacity Assessment*
- *Manaaki Mana Enhancing and Mana Protecting, a practitioner resource.*<sup>2</sup>
- *Guideline on the Role and Function of Directors of Area Addiction Services appointed under the Substance Addiction (Compulsory Assessment and Treatment) Act 2017*
- *Guideline on the Role and Function of Approved Specialists and Responsible Clinicians appointed under the Substance Addiction (Compulsory Assessment and Treatment) Act 2017*
- *Criteria for Approved Providers designated under the Substance Addiction (Compulsory Assessment and Treatment) Act 2017.*

<sup>1</sup> Defined under section 4 of the Substance Addiction (Compulsory Assessment and Treatment) Act 2017.

<sup>2</sup> <http://teraumatatini.com/manaaki-mana-enhancing-and-mana-protecting>

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# 1 Authorised officers

## Appointment of authorised officers

Directors of Area Addiction Services (Area Directors) are responsible for appointing authorised officers under section 91 the Act.

Each Area Director must appoint sufficient numbers of health professionals to be authorised officers to perform the functions and exercise the powers of authorised officers at all times (section 91).

The Area Director must be satisfied that authorised officers have the appropriate training and competence to fulfil their role.

Authorised officers are health professionals (as defined in section 4 of the Act) with appropriate training and appropriate competence in dealing with people with severe substance addiction (section 91(2)). Authorised officers must exercise their powers under the general direction of the Area Director.

See section 4 of this guideline for detailed appointment criteria for authorised officers.

## Role of authorised officers

Authorised officers are designated to perform certain functions and use certain powers under the Act. For families and others seeking to have a person placed under the Act, the authorised officer may be the first point of contact.

Authorised officers must be able to respond to concerns about a person's substance addiction and to give advice and assistance to a person making an application for assessment, including providing advice about options other than compulsory treatment. Furthermore, an authorised officer must be able to carry out an initial assessment of a person thought to have a severe substance addiction, for the purposes of completing a memorandum supporting an application for assessment (section 18 of the Act).

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## 2 Statutory functions of authorised officers

### **Section 97 of the Act: Advice and assistance of a general nature**

Authorised officers are intended as a 'ready point of contact' for anyone in the community who has any worry or concern about any aspect of the Act, or about services available for people who may have severe substance addiction. Authorised officers must provide assistance, advice and reassurance that are appropriate in the circumstances.

### **Section 16 of the Act: Assistance in arranging medical examination for application**

Section 16 allows anyone who intends to make an application for assessment to request the assistance of an authorised officer in arranging for a medical practitioner to examine the person. When assistance has been requested, section 16(2) sets out the steps that the authorised officer must take to satisfy himself or herself that there are reasonable grounds to believe that the person whom the applicant seeks to have assessed meets the criteria for compulsory treatment. These criteria are set out in section 7 of the Act.

There is a low threshold for establishing that an applicant has genuine concerns about a person. An authorised officer will normally investigate whether or not there are reasonable grounds for believing that a person may have severe substance addiction, unless the request is obviously false or is obviously not related to severe substance addiction.

In determining whether there are reasonable grounds for believing that the person may have a severe substance addiction, an authorised officer should investigate the following matters (while recognising that the person has rights under the Privacy Act 1993 and the Health Information Privacy Code 1994):

- why the applicant (who might be a family member or whānau, or some other person) has requested the assistance of an authorised officer in making an application for assessment
- whether the subject of the application has a history of severe substance addiction
- whether there is concern that the person may have severely impaired capacity to make decisions about treatment for addiction
- the type and duration of the relationship between the applicant requesting assistance and the person who may have a severe substance addiction
- the grounds on which the applicant thinks compulsory treatment is necessary
- any recent contact the person may have had with a general practitioner, addiction treatment services or the local emergency department
- any available record of the person's health information.

It should be noted that while the authorised officer does not have to carry out a capacity assessment, they should be able to assess from the available information how the person may lack capacity in terms of the Act.

Once an authorised officer is satisfied that a person is likely to meet the criteria for compulsory assessment and treatment for a severe substance addiction, they must make, or assist in making, arrangements for the person to receive a medical examination. The Act states a preference that the medical practitioner goes to the person (section 16(4)(a)) or the authorised officer can ask the person to voluntarily attend a medical practitioner. The medical practitioner can request the assistance of an authorised officer for the purposes of the medical examination (section 17).

The authorised officer must take into account the interests of the person or of any other person, as well as the following in determining whether a medical examination can be arranged:

- whether the person is likely to comply with arrangements for a medical examination
- any past records relating to the person, particularly relating to their previous engagement with voluntary treatment for addiction, presentations at emergency departments in relation to accidents, injuries or medical emergencies arising in connection with substance use
- risk of violence or self-harm
- the resources required and available to ensure the person is able to be safely taken to a medical practitioner.

## Requests from Police

Unlike the Mental Health (Compulsory Assessment and Treatment) Act 1992, the Act does not enable Police to detain a person pending assessment. This is not considered appropriate as people who are likely to come within the scope of the Act will have significant medical needs and cannot be safely managed in Police custody.

Although section 36 of the Policing Act 2008 enables Police to detain an intoxicated person for up to 12 hours for care and protection, this is not a means by which individuals can be detained for assessment under the Act.

## Arranging a medical examination

The authorised officer must arrange or assist in arranging for a person to be examined by a medical practitioner if the authorised officer has reasonable grounds to believe that the person meets the criteria for compulsory treatment.

## Issuing a memorandum

If it is not practicable for a medical practitioner to visit the person or to take a person to a medical practitioner for examination, an authorised officer may complete a memorandum, stating they have reasonable grounds to believe that the person has a severe substance addiction and has severely impaired capacity to give informed consent to treatment for that addiction (section 18).

The memorandum must state:

- the attempts that have been made to have a medical practitioner examine the person and why the attempts have been unsuccessful
- that the authorised officer has reasonable grounds on which to believe that that person meets the criteria for compulsory treatment set out in section 7(a) and (b) of the Act
- full particulars of the grounds.



The format of the memorandum is available online on the Ministry of Health website [www.health.govt.nz](http://www.health.govt.nz)

## Arrangements for specialist assessment

On receipt of an application for assessment, the Area Director or an authorised officer acting with the authority of the Area Director, must, as soon as practicable, make the necessary arrangements for the person to be assessed by an approved specialist.

Those arrangements include nominating an approved specialist, who cannot be the medical practitioner that signed the medical certificate under section 17.

The authorised officer must also determine, with the approved specialist, where and when the assessment is to take place. Once the specialist assessment has been arranged, the authorised officer must give the person to be assessed a written notice that:

- requires the person to attend at the place and time specified in the notice
- explains the purpose of the assessment
- states the name of the approved specialist (section 19(2)(c)).

The notice and its contents must be explained to the person to be assessed in the presence of a member of the person's family, whānau or their caregiver, or anyone else concerned with the welfare of the person. This process reflects the fact that the person may lose their liberty following the specialist assessment.

People with severe substance addiction may not have ready access to a member of their family or whānau and may not have someone who is identifiable as their principal caregiver. However, it is important that serious efforts are made to contact the family, whānau or friend identified by the person concerned. If a principal caregiver has not been identified, the person should be offered support from a suitable person such as a kaumātua, other cultural elder or support person, or a peer support worker.

If the person is in significant distress or is otherwise unable or unwilling to engage in the explanation of the notice, the authorised officer should take a therapeutic approach to organising the specialist assessment so that the person's welfare is prioritised over strict legal compliance. If a person adamantly refuses to have anyone else present during the explanation, this must be clearly documented.

The authorised officer will ensure that arrangements are made to assist the person to be at the place where the specialist assessment is to take place.

### **Section 21 of the Act: Assistance in arranging specialist assessment**

If the person refuses to attend at the time and place specified in the section 19 notice, an authorised officer may take reasonable steps to take the person to the approved specialist, including calling for Police assistance. An authorised officer may wish to use the skills within the clinical team to assist with problem-solving around attendance, where this has been or is likely to be difficult, before calling Police.

Police assistance should only be sought once all other options have been explored. The following factors should be considered before asking Police to assist with taking the person for assessment.

- Does the person have memory deficits that mean they are likely to forget to attend?
- Is the person able to use public transport (with or without support)?

- Can another person take them to the specialist conducting the assessment?
- Is the person physically well enough to attend or should the specialist attend the person?
- Is the person reluctant to be assessed in a particular setting and, if so, is there an alternative available?
- Does the person's behaviour present an unacceptable risk to other people?

The authorised officer should also consider the impact on the person of involving Police, particularly as people with severe substance addiction may have had negative experience of Police. Police should be given reasonable notice if their assistance is sought to transport a person to a specialist assessment.

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# 3 Statutory guidance when exercising powers under the Substance Addiction (Compulsory Assessment and Treatment) Act 2017

The Ministry of Health recommends that all authorised officers have a good working knowledge of the Act and other guidelines in this series. The information set out below is intended to support the *Guideline to the Substance Addiction (Compulsory Assessment and Treatment) Act 2017* by particularly focusing on the powers and duties of authorised officers.

## Respect for cultural identity and personal beliefs

All persons and courts exercising authority under the Act must do so with proper recognition and consideration of the importance of the person's family and whānau.

Family, whānau, and other caregivers are important sources of information and should be encouraged to provide information about the person, particularly in terms of the person's history and previous episodes of treatment. Early engagement with family and whānau also supports their engagement in planning for ongoing voluntary treatment.

For more information about working with family and whānau, see:

- Let's Get Real: Working with Families /Whanau Learning Module (Te Pou o te Whakaaro Nui) 2008
- Addiction Intervention Competency Framework (dapaanz/Addiction Practitioners' Association Aotearoa-New Zealand) 2011
- Supporting Parents, Healthy Children (Ministry of Health) 2015
- Family Inclusive Practice in the Addiction Field: A guide for practitioners working with couples, families and whanau (Kina Families and Addictions Trust) 2005.

## Enforcement

Subpart 9 of the Act contains a number of provisions relating to enforcement of the Act. An authorised officer may be asked to assist in returning a person to a treatment centre (section 106(3) of the Act).

# Use of reasonable force

Section 109 provides for the use of reasonable force in carrying out certain functions under the Act. Force includes every touching of a person for the purposes of compelling or restricting movement or administering treatment. It is appropriate for authorised officers to generally only use minimal force when exercising their powers. 'Minimal force' means light or non-painful touching; for example, to guide a person towards a building or help a person into or out of a vehicle.

The extent of 'reasonable force' depends on the circumstances of the situation. In all situations, the authorised officer should not use any more force than is reasonably necessary to safely exercise the relevant power. Use of excessive force without reasonable justification may be considered assault, which is a criminal offence.

The use of force should always be considered a last resort. Authorised officers should be able to demonstrate that conflict resolution and de-escalation approaches were considered and attempted before using coercion.

An authorised officer should request assistance from Police if it is considered necessary to use more than minimal force outside a treatment centre.

An authorised officer has no powers to use force to enter premises.

When more than minimal or inconsequential force is used while exercising a power under the Act, a log recording the circumstances must be completed by the authorised officer and forwarded to the Area Director as soon as possible. Depending on the circumstances of the use of force, the Area Director may wish to review the situation with the authorised officer. A log for this purpose should include:

- the date, time and place that force was used
- why force was required, including details of attempts at de-escalation
- what type of force was applied and by whom
- any injury to the person, other residents or staff members
- any follow-up required as a result of force being used.

The requirements to log the use of force will normally be fulfilled through compliance with a district health board's reportable event notification system or similar system for approved providers. This information must be available for inspection by the Area Director, the Director of Addiction Services and a district inspector.

Powers are to be exercised with respect for rights of people subject to and proposed to be subject to the Act

## Rights of patients

The rights of people subject to the Act are set out in Subpart 5 of the Act (sections 49-67). Authorised officers should have a good working knowledge of what is required by each of these rights.

Certain sections are particularly relevant to the initial assessment process in which authorised officers are more likely to be involved. Providing general and specific information to persons undergoing assessment about their rights, the legal process and their legal status is required

throughout the process of assessment and compulsory treatment. People should also be informed of their right to independent advice and legal advice (sections 56 and 57).

If the requirements to keep people informed about their rights are to be meaningful, authorised officers must provide more than a cursory explanation of rights to the person and their family and whānau. Staff need to be certain they have made reasonable attempts (often on more than one occasion) to give the person the opportunity to ask questions about their legal status and their rights. Written information (including information in plain language) must be provided as a supplement to personal communication.

## **Code of Health and Disability Services Consumers' Rights**

The Code of Rights is managed by the Health and Disability Commissioner. The Code applies to any person providing a health service to the public, including authorised officers. Powers under the Act and general duties of authorised officers are to be exercised in accordance with the Code.

## **New Zealand Bill of Rights Act 1990**

Rights and freedoms of people generally are provided in the New Zealand Bill of Rights Act 1990. Authorised officers' powers infringe upon certain rights, including freedom from unreasonable search and seizure and the right not to be arbitrarily arrested or detained (section 22). To comply with the Bill of Rights Act, authorised officers must exercise powers affecting human rights in a reasonable way that minimally infringes on the rights affected.

Authorised officers should always have reasonable grounds for exercising a power if these rights are in question.

## **Patient privacy**

The Privacy Act 1993 and the Health Information Privacy Code 1994 apply to the exercise of authorised officers' powers. Authorised officers should be able to manage communication with family, whānau and others, with appropriate respect for the privacy of the person. Online training is available via Ko Awatea LEARN website <https://koawatealearn.co.nz/course/>

## **Section 91 of the Act: specific statutory requirements for authorised officers**

Health professionals may be designated as authorised officers by the Area Director under section 91 of the Act. An authorised officer must be trained and competent in responding to people with substance addiction, and to their family, whānau and other concerned persons. Every authorised officer must be issued with a document that identifies the holder and states that the holder is an authorised officer under the Act. A sample document is available online at [www.health.govt.nz.sacatforms](http://www.health.govt.nz.sacatforms)

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# Appendix 1: Appointment criteria for authorised officers

Authorised officers are health professionals designated and authorised by an Area Director to perform certain powers and functions under the Act. Authorised officers must have appropriate training and experience to:

- respond to concerns about a person's severe substance addiction
- contribute to the assessment and treatment of people considered to have a severe substance addiction and severely impaired capacity to consent to treatment for that addiction.

Authorised officers must have a good working knowledge of the Act and other relevant legislation. They should also be familiar with addiction treatment services, mental health services and disability services in their area in order to fulfil their obligation under section 97 to provide general advice, assistance and reassurance and to provide information to people with severe addiction, families and whānau and others.

For example, authorised officers will need to understand the compulsory assessment and treatment process, the role of district inspectors and the Court. Authorised officers should also understand the powers of Police in respect to the Act and the scope of the local memoranda of understanding between Police and district health boards.

The authorised officer role is competency-based. To be considered for appointment as an authorised officer, a health professional (as defined under section 4 of the Act) will have sufficient training, knowledge and practical experience in responding to people with severe substance addiction and their families and whānau.

The process for appointing authorised officers must ensure that there are adequate means to establish the suitability of a health professional against competency-based criteria. These criteria can be divided into three broad categories:

- knowledge
- skills
- attitudes.

These criteria reflect national sector standards and guidelines informing the application of powers under the Act and include:

- *Addiction Intervention Competency Framework* (dapaanz/Addiction Practitioners' Association Aotearoa-New Zealand, 2011)
- *Let's Get Real: Real skills for people working in mental health and addiction* (Ministry of Health, 2008)
- *Recovery Competencies for New Zealand Mental Health Workers* (O'Hagan, 2001)
- *Addiction Specialty Nursing Competency Framework for Aotearoa New Zealand*. (Drug and Alcohol Nurses of Australasia (DANA), 2012)
- *Te Whare o Tiki: Co-existing Problems knowledge and skills framework* (Matua Raki and Te Pou o te Whakaaro Nui, 2013)

- *Peer Workforce Competencies* (Te Pou o te Whakaaro Nui, 2014).

The attitudes an authorised officer brings to their duties is essential to the successful application of their knowledge and skills. In addition to the proper application of knowledge and skills, an authorised officer must also demonstrate a commitment to upholding the rights of people who access services and must apply a recovery approach in their practice (*Let's Get Real* and the *Addiction Intervention Competency Framework* provide useful guidance about values and attitudes).

## Knowledge

An authorised officer must have sufficient training and experience to demonstrate competence in the following areas.

### **Substance addiction:**

- the assessment of severe substance addiction, especially from a bio-psycho-social perspective
- the assessment, treatment and management of mental health and addiction problems and co-existing problems
- the use, and side-effects, of medications used to support addiction and mental health treatment
- common health problems (especially withdrawal) in people with severe substance addiction, and signs and symptoms of those problems
- the management of aggression and violence requiring the use of safety techniques such as de-escalation and therapeutic communication skills.

### **Working with family and whanau:**

- knowledge of cultural difference, including an awareness of the principles of the Treaty of Waitangi, the implications of partnership, and sensitivity to cultural identity and personal beliefs
- knowledge of how the concept of mana-enhancing practice is demonstrated
- knowledge of Māori concepts of mental health and addiction
- knowledge of the impact of addiction issues on the health and wellbeing of children and the threshold for child protection interventions
- knowledge of family violence power and control dynamics and effective family violence interventions
- managing requests for information on addiction services, including services that are available to support family and whānau.

### **The Substance Addiction (Compulsory Assessment and Treatment) Act 2017:**

- knowledge of the purpose of the Act
- knowledge of relevant definitions, including definitions of 'severe substance addiction', 'severely impaired capacity' and the criteria for compulsory treatment
- knowledge of the statutory requirements for authorised officers

- interactions with other roles designated in the Act (particularly the Area Director, approved specialists and responsible clinicians).

## Other legislation

An authorised officer should have a general understanding of the following legislation that impacts on their tasks, particularly when it interfaces with the Act:

- use of force and powers of arrest generally (Crimes Act 1961)
- adult guardianship (Protection of Personal and Property Rights Act 1988)
- care and protection of children (Oranga Tamariki 1989)
- suspension of motor vehicle licences of certain people (Land Transport Act 1998, section 19)
- rights of health and disability service consumers (Code of Health and Disability Services Consumers' Rights 1996)
- constitutional rights and obligations (New Zealand Bill of Rights Act 1990, Human Rights Act 1993)
- privacy and the appropriate management of health information (Privacy Act 1993, Health Information Privacy Code 1994)
- Health and Safety at Work Act 2015.

## Skills

Authorised officers must demonstrate a variety of skills derived from their function as health professionals with expertise in dealing with people with severe substance addiction, including:

- the ability to form reasonable grounds to believe that a person has a severe substance addiction, using accepted clinical tools such as those set out in the *Mental Health and Addiction Screening and Assessment Guideline* (Matua Raki, 2016)
- an ability to carry out appropriate tests to examine cognitive impairment, analyse results and make recommendations for appropriate treatment
- skills in:
  - engagement
  - interpersonal relationships
  - conflict resolution
  - problem-solving
  - behaviour management
  - primary and secondary de-escalation
  - recognising and managing medical and other emergencies
- good oral and written presentation skills
- the ability to work in a multidisciplinary team
- the initiative to seek specific and specialist advice when appropriate
- familiarity with therapeutic communication skills
- the ability to work cooperatively with community agencies, including iwi, marae committees, Pacific communities, social support agencies and church groups.
- the ability to work appropriately with family and whānau seeking support in relation to individuals who may have severe substance addiction
- the ability to work in cooperation with Police, the Family Court and general practitioners
- the ability to educate other agencies and the public on the Act.



## **Attitudes**

Attitudes are the factors that effectively link content and process. Specifically, an authorised officer needs to show evidence of the following attitudes:

- a strong recovery and wellbeing focus
- sensitivity to other people, their experiences and their context
- a focus on human rights and the rights of the person receiving the service
- cultural awareness and cultural competence
- an attitude of self-reflection and self-awareness towards their own practice
- sensitivity when working with peer support workers, advocates and interpreters as well as an ability to enable people to gain access to such supports
- respect for privacy and confidentiality
- respect for the intent of the Act.

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# Appendix 2: Selecting and monitoring authorised officers

## Selecting authorised officers

The selection process for authorised officers must take into account the requirements set out in this guideline and the Act. A potential candidate's employer and the Area Director will participate in the selection process. There will be some situations when an authorised officer is not an employee of a district health board but is an employee of another approved provider. Area Directors should be actively involved in ensuring that approved providers maintain adequate training and support for authorised officers.

When staff are being interviewed for positions that include authorised officer responsibilities, it is essential that the Area Director or their delegate is involved. The Area Director and the employer should agree on the interview process to be used. This will provide a structure that evaluates competence for potential authorised officer appointments and meets the needs of both the employer and the Area Director.

The Ministry of Health recommends that potential candidates for appointment as authorised officers are identified, trained and assessed as part of a structured appointment process. Training should ensure that candidates are able to competently apply the Act by way of case studies, clinical scenarios and mentoring. A formal assessment addressing the appointment criteria in section 4 of this guideline, should follow this training.

## Monitoring authorised officers

The Area Director should review the performance of authorised officers each year, to ensure authorised officers remain competent and have access to professional development. Yearly reviews should include:

- ensuring that adequate professional development and clinical supervision has occurred
- identifying areas of attitudes, skills or knowledge gaps that need to be addressed and developing a plan to address these areas
- identifying issues that need to be addressed with the authorised officer's employer (eg, resources, adequate release time to fulfil functions, professional organisation membership, remuneration)
- following up any corrective actions taken during the year in response to incidents or events.

Authorised officers' employers should understand that there is an annual monitoring process in place, and their support should be sought to ensure that the outcomes of annual reviews can be implemented.

# Employers' obligations

The tasks carried out by authorised officers require the active support of their employers and the Area Director. The main responsibility of employers is the need to ensure that only competent staff are employed as authorised officers (see section 4 of this guideline).

Employers and Area Directors share a responsibility to support authorised officers, including:

- initial and ongoing training and performance monitoring
- sufficient resources (such as transport, communications equipment, office space and administrative support) and dedicated release time for authorised officers to carry out their responsibilities
- access to regular clinical supervision and advice, as well as support and debriefing following adverse incidents
- access to approved specialists and other health professionals required for assessment and examination, including after-hours support and advice
- a local memorandum of understanding with Police
- indemnity cover to provide protection to staff from legal challenge while carrying out their duties under the Act
- access to legal opinions and relevant legislation.

Note that, because the Act is not designed as crisis intervention legislation, it does not require that authorised officers be available 24 hours each day. Some services may wish to consider whether there is sufficient demand to provide extended cover, and how this might best be provided.