

# **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 Ministry of Health via the Director of Mental Health.

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MANATŪ HAUORA

## Foreword

The following guidelines have been prepared to provide guidance to District Inspectors in the exercise of their powers, duties and functions pursuant to the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Act) to ensure that the purposes and objectives of the Act are consistently adhered to and achieved.

I consider that building and maintaining positive and appropriate working relationships with patients, staff and families of varying backgrounds and cultures is key to the District Inspector role. Strong relationships with fellow District Inspectors, the Director of Mental Health, the Mental Health Review Tribunal, the Courts and the local Police, form the basis of all of the work carried out by District Inspectors.

It is the attitude that District Inspectors apply to their work, as well as their knowledge and skills, that helps to ensure that the use of the Act strikes the right balance between the rights of the individual and the community to freedom, and providing care appropriate to the needs of people suffering from a 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 or formal legal advice from the Ministry of Health through the Director of Mental Health.

The District Inspectors are funded by Vote Health, and these guidelines provide the basis on which the expenditure of public funds can be made accountable.

These guidelines are issued pursuant to section 130(a) of the Act, which states that the Director-General of Health may from time to time issue guidelines for the purposes of the Act. These guidelines are in effect from December 2011.

Kevin Woods  
**Director-General of Health**

## **Preface**

District Inspectors are lawyers appointed by the Minister of Health under the Act. The work that District Inspectors perform is independent. As District Inspectors are funded by Vote Health, they have statutory reporting responsibilities to the Director of Mental Health.

District Inspectors assist patients who are being assessed or treated under the Act by providing information and support to ensure that patients' rights under Part 6 of the Act are being upheld. District Inspectors provide an important safeguard of the rights of patients being treated under the Act, regardless whether treatment is within an inpatient unit, a forensic unit or the community.

District Inspectors are independent from health and disability services. They are not to act as patient advocates or as legal advisors to the mental health or disability service, or any health provider. District Inspectors are not health care providers. District Inspectors are required at all times to be detached from the clinical decision-making processes that affect individual patients.

The Ministry of Health values the contribution District Inspectors make by assisting the quality improvement at an individual service level, and through their regular reports to the Director of Mental Health. Through their routine functions District Inspectors become familiar with services and are able to detect patterns or problems that others may not notice. In many cases, mental health services have used the reporting process and the recommendations made by District Inspectors to bring about positive changes and improvements to service provision.

John Crawshaw  
**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. The Lunatics Act 1882 first appointed independent 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 are conferred on modern day District Inspectors.

The current Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Act) is the only legislation that mitigates society's ability to detain a person in order to compulsorily assess and treat them for a mental disorder by also providing for the protection of their individual rights. Mental disorder is defined in the Act 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, it also recognises that the State has an obligation to ensure that individuals' other rights are protected to the maximum extent possible within the framework of requirements for assessment and treatment of persons with mental disorders. The Act provides protections aimed at ensuring that:

- processes for compulsory assessment and treatment under the Act are appropriate and in line with good clinical practice
- patients are not detained any longer than is required
- within that framework the basic principles of natural justice are observed.

Review mechanisms are also provided at various stages of the assessment and treatment process, so that each individual or others acting on their behalf have an opportunity to appeal and review their clinical and legal status.

District Inspectors are established by statutory authority under the Act. Their role is 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 if required in order for their rights to be upheld.

The rights of voluntary consumers of mental health services (who make up 80–90 percent of such consumers) are the same as those of other consumers of health and disability services. This statutory distinction is an important one for District Inspectors to keep in mind as it defines a key part of their role: ensuring that the rights of people assessed and treated **compulsorily** under the Act are upheld and protected. However, in their wider function of conducting enquiries under section 95 of the Act, District Inspectors may also enquire into matters after a patient has been released from compulsory care.<sup>1</sup>

<sup>1</sup> *W v Shortland*, 22 December 2003, Paterson J, HC Hamilton (CIV2003-419-816).

# 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 Act. Only barristers or solicitors may be appointed to these roles. 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 on District Inspectors by the Act (sections 94A(1)(a) and 94A(2)(a)(i)), as well as any other powers, duties and functions as may be conferred or imposed in writing by the Director of Mental Health for the purpose of dealing with situations of urgency (sections 94A(1)(b) and 94A(2)(a)(ii)). However, under section 94A(2)(b), Deputy District Inspectors may only exercise these powers, duties or functions at the direction of the Director of Mental Health or the District Inspector for whom they are acting as deputy.
- 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 The appointment criteria for District Inspectors and Deputy District Inspectors, as determined by the Ministry of Health, 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 Act 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 common sense
  - **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 allow for continuity and to enable recently appointed incumbents to consolidate their experience in the District Inspector role. An example of the usual appointment process is described below.

- 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, as listed above. Those applicants who best demonstrate the criteria are shortlisted, whether they are existing District Inspectors or new applicants.
- 1.5.2 If 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 if 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. Applicants are given the opportunity to respond to comments received.
- 1.5.4 After the interviews, referees for all applicants are spoken with, in addition to checking the written references they have supplied.
- 1.6 Pursuant to section 94(7)(c), a 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 adequately perform the duties of the office
  - neglect of duty
  - misconduct
  - inability to perform the duties of the office.
- 1.7 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)). Travel mileage is recompensed according to the rate set by Inland Revenue.



## 2 The Role of the District Inspector

- 2.1 District Inspectors are appointed to ensure that the provisions of the Act are upheld. Functionally, the role of District Inspector is similar to that of an ombudsman. 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 lawfully detained and not subject to abuse or ill-treatment.
- 2.2 In essence, District Inspectors have three main roles:
- ensuring that every individual who is subject to a 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
  - 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
  - investigating complaints and conducting enquiries.
- 2.3 District Inspectors are empowered by statute to undertake a number of functions and exercise a number of powers that together constitute the District Inspector's role as a watchdog of patients' rights. These functions and powers include:
- providing process information to individuals and their families, including the rights of complaint and review
  - checking documentation
  - visiting individuals subject to compulsory assessment and treatment
  - considering whether a review by a Judge under section 16 is warranted
  - visiting and inspecting any hospital or service in the District Inspector's locality, including both inpatient or outpatient facilities
  - complaint investigation, resolution and reporting
  - conducting enquiries.

## **2.4 Senior Advisory District Inspector**

2.4.1 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.

2.4.2 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 enquiries of a particularly complex or sensitive nature
- 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 about the role of District Inspector and maintaining good interfaces with other agencies involved in protecting patient rights.

### **3 Providing Information and Checking Documentation**

- 3.1 District Inspectors monitor the application of the Act by ensuring that every patient who is subject to compulsory assessment and treatment under it is assessed and treated in accordance with the statutory requirements and in a fair and reasonable manner within the principles of natural justice.
- 3.2 This means that District Inspectors have an obligation to see every patient to 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.
- 3.3 In practical terms, this role involves:
- the assessment procedure under section 12
  - the assessment procedure under sections 14 and 14A
  - review procedures under sections 35 and 76
  - attendance at hearings under sections 16, 17–30, 34 and 79.

#### **3.4 Assessment procedure under section 12**

- 3.4.1 District Inspector functions in relation to a patient usually commence at section 12(8). By this stage the patient has completed the first period of assessment and treatment under the Act, and the patient's responsible clinician has decided that a further period of assessment of up to 14 days is required. Under section 12(5)(f), 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.
- 3.4.2 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 by a Judge under section 16. To make such a decision, the District Inspector is required to talk to the patient and, if possible, ascertain the patient's wishes in the matter (section 12(8)).
- 3.4.3 If the District Inspector considers such an application should be made, they must 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 section 2 of the Act), or usual medical practitioner to make this application for a review (section 12(9)). 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.

- 3.4.4 A District Inspector's visit to a patient under the provisions of section 12 is the first formal occasion on which the 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.
- 3.4.5 During this visit, the District Inspector should introduce him or herself in the District Inspector role, describe 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, and encourage the patient to make an application under section 16 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.

### **3.5 Assessment procedure under sections 14 and 14A**

- 3.5.1 The District Inspector's next formal involvement with a patient is under section 14A. 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 documents relating to the application for a compulsory treatment order to the District Inspector (section 14A(2)(f)). On receipt of the documents, the District Inspector is required to talk to the patient (unless impracticable) and, if possible, ascertain the patient's wishes about whether to appear in court at the compulsory treatment order application hearing (section 14A(4)(a)).
- 3.5.2 A District Inspector's visit to a patient under section 14A(4) of the Act is the second formal occasion on which the patient meets a District Inspector (or an official visitor) through the assessment process. During this visit, the District Inspector will 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 responsible clinician's application for a compulsory treatment order.
- 3.5.3 If 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.

- 3.5.4 The District Inspector must decide, having regard to any view expressed by the patient, whether or not the District Inspector should appear before the court to be heard on the application for a compulsory treatment order (section 14A(4)(b)). If 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 their role to one of *amicus curiae* (that is, ensuring that the court is aware of all relevant issues but not advocating the patient's cause).
- 3.5.5 The District Inspector is not the patient's advocate or lawyer, and their presence at the court hearing may be superfluous if the patient already has a lawyer. Therefore, District Inspector attendance at such hearings should generally be limited to circumstances when their attendance is either requested by the patient or necessary to protect the patient's rights.
- 3.5.6 Appendix 2 suggests a set of steps to follow when formally meeting a patient under section 14A.

### **3.6 Review procedures under sections 35 and 76**

- 3.6.1 Under section 76, 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 their clinical review. If they do not attend, the Director of Area Mental Health Services 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 that they are not fit to be released from compulsory status, the responsible clinician must send a copy of the certificate of clinical review to the District Inspector.
- 3.6.2 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) allows the District Inspector, friend or relative to refer the case to the Mental Health Review Tribunal (MHRT) for consideration under section 79.
- 3.6.3 A District Inspector who receives a copy of the certificate of clinical review under section 76 must consider whether or not an application should be made to the MHRT 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 them, unless this is impracticable in which case communication should be in writing) and, if possible, ascertain the patient's wishes in the matter.

- 3.6.4 If, having regard to any view expressed by the patient, the District Inspector considers that an application should be made, they should encourage the patient or the other recipients of the clinical review certificate under section 76(7)(b) 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 MHRT, and the MHRT may subsequently review the patient's condition under section 79, or section 80 if the patient is a special patient, or section 81 if the patient is a restricted patient. It is important to consider that when a District Inspector recommends that an application be made to the MHRT, this will be contrary to the medical opinion of the responsible clinician regularly treating that patient. Appendix 3 contains a summary of information about the MHRT, including its powers and functions.
- 3.6.5 If the MHRT hearing concludes that the patient is not considered fit to be released from compulsory status, then the District Inspector (or an official visitor) 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 MHRT's decision (section 79(12)).

### **3.7 Attendance at hearings under sections 16, 17–30, 34 and 79**

- 3.7.1 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 when there is some good reason to attend. Ordinarily, if the District Inspector has referred the matter to the court (such as under section 12(10)) or referred the case to the MHRT (such as under sections 35(2) or 76(11)), the District Inspector would attend the hearing. A District Inspector would generally also attend a hearing of a compulsory treatment order under section 14A(4) if a patient has asked them to do so.
- 3.7.2 In each of these hearings, the District Court Judge or MHRT is the statutory body that 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 MHRT.
- 3.7.3 It is also important to realise that frequent attendance or availability of a District Inspector at hearings may interfere with the independent legal representation of patients.

## 4 Visitation and Inspection

- 4.1 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.
- 4.2 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 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. Non-government organisations capable of taking patients or proposed patients under the Act are included for inspection. District Inspectors may still visit places of residence, but such areas should only be visited if there is a specific concern or complaint.
- 4.3 The extent of a District Inspector's powers of inspection is outlined in section 97. 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 the Act, the responsible clinicians are to provide the District Inspector with access to:
- registers and records required to be kept under the Act, which District Inspectors may sign, under the last entry of the document, to indicate that they have seen it
  - any orders and other documents relating to any of the patients the District Inspector requires
  - all letters and other postal packets withheld by the responsible clinician under section 123 or section 124.
- 4.4 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.

- 4.5 Within 14 days of any visit to a hospital or service, a District Inspector must give a written report on the visit to the Director of Area Mental Health Services (section 98).



## 5 Complaint Handling and Resolution

- 5.1 District Inspectors have an important role in receiving and investigating complaints by patients about alleged breaches of rights, and other matters relating to care and treatment under the Act. Many of the matters brought to the attention of the District Inspector can be resolved through informal contacts and liaison with the patient, the responsible clinician and the Director of Area Mental Health Services where appropriate. Statutory authority is found in sections 75 and 95.
- 5.2 Most complaints will have been made directly to the District Inspectors by patients or their families or significant others. Complaints about mental health treatment matters are also made to the Office of the Health and Disability Commissioner. When these complaints relate to the care and treatment of patients detained under the Act, 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 enquire 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.
- 5.3 If 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, if the complaint concerns a situation where an individual may meet the requirements to be found mentally disordered under the Act, and the 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.
- 5.4 Before a final decision about passing on 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 that the limits of the District Inspector's jurisdiction have 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 the Office of the Health and Disability Commissioner to investigate the complaint. It is important that the complainant makes an informed decision as the different jurisdictions have different processes and remedies available.

## **6 Conducting Investigations and Enquiries**

- 6.1 District Inspectors have an important role in receiving and investigating complaints by patients about alleged breaches of their rights and other matters relating to care and treatment under Part 6 of the Act. 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.
- 6.2 In most cases mental health services use 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 that is readily available to allow dissatisfied patients to address legitimate concerns about their treatment under the Act.

### **6.3 Conducting section 75 investigations**

- 6.3.1 Under section 75 of the Act, a District Inspector may investigate complaints regarding breaches of patients' rights, report on that investigation, and make recommendations to the Director of Area Mental Health Services.
- 6.3.2 The rights of patients are specified and particularised in Part 6 of the Act. General rights to information are outlined in section 64, and specific rights are set out in sections 65 to 74. Complaints regarding breaches of these rights may be made by patients themselves or certain other people acting on their behalf.
- 6.3.3 Section 75 investigations are a routine part of a District Inspector's work and are usually conducted informally. Such investigations may form the basis of more in-depth investigations or may be used to determine whether there are any issues requiring further investigation.
- 6.3.4 Appendix 5 contains a description of 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 of health information.
- 6.3.5 If a District Inspector receives a complaint of possible criminal activity, such as an assault by a staff member, during an inspection or investigation, 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.

- 6.3.6 If 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. For example, a District Inspector shall investigate if a patient complains that their mail is being withheld by staff. The District Inspector must use professional judgement to assess the seriousness and validity of such complaints.
- 6.3.7 If there is a complaint over inappropriate medical treatment, the District Inspector should discuss this with the Director of Area Mental Health Services 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 clinical knowledge.
- 6.3.8 The District Inspector is required to talk with the patient, the complainant (if this 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. If the District Inspector is satisfied that the complaint has substance, they must report the matter to the Director of Area Mental Health Services together with recommendations as the District Inspector thinks fit.
- 6.3.9 Once referred to the Director of Area Mental Health Services under section 75(2), it is mandatory for the Director of Area Mental Health Services to take all steps necessary to rectify the matter.
- 6.3.10 The District Inspector must inform the patient or complainant of the investigation's findings under section 75(3). There is discretion as to how the patient or complainant is informed, and at times it will be appropriate to receive clinical advice on the least disruptive way of reporting the findings of an investigation. 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 MHRT for further investigation (section 75(4)).
- 6.3.11 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 Director of Area Mental Health Services and the Director of Mental Health, together with recommendations if appropriate. A copy should also go to the manager or chief executive officer of the hospital or service.
- 6.3.12 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.

## 6.4 Conducting section 95 enquiries

- 6.4.1 Unlike section 75 investigations, section 95 enquiries focus on the role of the service. Under section 95 of the Act, District Inspectors may enquire into:
- any possible breach of the Act (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.
- 6.4.2 Section 95(2) grants District Inspectors the same powers and authority to summon witnesses and receive evidence as are conferred upon a Commissioner of Inquiry by the Commissions of Inquiry Act 1908. This is a general provision, providing wide powers for District Inspectors to make enquiries ranging from follow-up enquiries on a particular problem all the way to a formal enquiry into major incidents. District Inspectors may undertake the lower-level, more narrowly focused enquiries routinely.
- 6.4.3 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 enquiries in which a District Inspector uses the general powers of enquiry 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 they may wish to make some specific enquiries about the situation. As part of these enquiries, the District Inspector will usually seek information from the Director of Area Mental Health Services, the manager of the service or other staff.
- 6.4.4 The more major enquiries conducted under section 95 of the Act are generally large scale and concerned with major incidents, such as a suicide or an 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 enquiries are relatively rare, with generally only one or two enquiries taking place nationally in a year. Appendix 4 outlines the standard decision-making process for initiating enquiries under section 95 and the standard procedure the Director of Mental Health uses when dealing with an enquiry report.
- 6.4.5 A District Inspector, the Director of Mental Health, or the Minister of Health may initiate such enquiries. Because of the formality of section 95 enquiries and their potential impact on a service, District Inspectors should always consult with the Director of Mental Health before proceeding with a section 95 enquiry. 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 enquiry. 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 when appropriate.

- 6.4.6 Formal section 95 enquiries should generally be limited to circumstances where there is clear evidence of outstanding issues that are not being addressed by the mental health service.
- 6.4.7 The Director of Mental Health may also direct a District Inspector to undertake an enquiry under section 95. Such an enquiry would normally be undertaken if the Director were provided with information from consumers, family and 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 Director of Area Mental Health Services. If it is 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.
- 6.4.8 The Director of Mental Health may sometimes ask a District Inspector to undertake a section 95 enquiry in another region. This is usually done so that the relationship between the local District Inspector and the local service is preserved or to bring a fresh perspective.
- 6.4.9 Appendix 5 describes the procedures that 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 of health information.
- 6.4.10 District Inspectors are required to report on the outcome of their enquiries to the Director of Mental Health. In deciding on the format for their reports, a District Inspector will give particular consideration to presentation, so that information, which should be released to the family and potentially to the public, constitutes the report proper. This information should comprise 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 enquiry, and information identifying persons involved and those providing information to the enquiry should be attached as appendices to the main report.
- 6.4.11 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 legal discretion and judgement regarding privacy concerns in preparing their reports.

- 6.4.12 There are no statutory actions that the Director of Area Mental Health Services 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 of Mental Health considers this to be appropriate. If 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.
- 6.4.13 The Director of Mental Health uses 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.
- 6.4.14 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.
- 6.4.15 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. It is not uncommon for a service to begin addressing issues during the course of a District Inspector's enquiry.
- 6.4.16 It is also important to emphasise that the Ministry of Health and the Director of Mental Health expect District Health Boards, mental health services and other publicly funded health services to establish their own quality and safety monitoring processes.
- 6.4.17 The Ministry of Health and Director of Mental Health 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. If this internal review and follow-up does not occur, or if the service's response does not appear to adequately address the concerns that have been raised, then the Director will then seek to use a District Inspector to enquire further into the matter.

## 7 Accountability Relationships

- 7.1 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.
- 7.2 The work that District Inspectors perform is independent. As District Inspectors are funded by Vote Health, they have statutory reporting responsibilities to the Director of Mental Health.
- 7.3 The Director monitors District Inspectors' activities via their monthly reports and authorises the payment of all financial claims for District Inspectors' services. The Director 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, as identified by these guidelines. The Director of Mental Health also considers District Inspectors' monthly reports to identify any issues that have been raised that require follow-up by the Ministry of Health.
- 7.4 The monthly reports must include details of the patients visited, inspections and visits undertaken, and complaint resolution. Part 8 of these guidelines contains more information about monthly reporting requirements. Please note that the monthly reports are separate from the full enquiry reports that District Inspectors may make to the Director of Mental Health under section 95(3).
- 7.5 To assist the Ministry to identify that the activities and claims made by District Inspectors are within the specifications of the District Inspector role, the Ministry may, from time to time, seek to verify claims made by District Inspectors. The District Health Board in the District Inspector's locality may be contacted to provide details of patient records for verification purposes.
- 7.6 If the Director of Mental Health considers that a District Inspector has discharged their statutory powers in an unnecessary or inappropriate way (for instance, by providing functions not stipulated by these guidelines, or by invoking a section 95 enquiry without first allowing an internal enquiry to be conducted by the local service), then the Director of Mental Health will address these concerns directly with the District Inspector.
- 7.7 District Inspectors are granted civil immunity under section 99A(1) 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 the Act (section 99A(2)).

- 7.8 The obstruction of a District Inspector performing official duties is punishable by a fine of up to \$2,000 under section 117 of the Act. A Director of Area Mental Health Services, 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 they have:
- 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 conducting official duties.
- 7.9 To date there has been no prosecution of anyone under this provision. Any District Inspector who believes they have been obstructed while performing official duties should discuss the situation with the Director of Mental Health.
- 7.10 District Inspectors must provide reports on any visits to hospitals or services, and the outcome of any investigation and enquiries, to the Director of Area Mental Health Services and Director of Mental Health within specific timeframes. However, there is no direct accountability relationship between District Inspectors and the Director of Area Mental Health Services.

### **7.11 Optional Protocol to the Convention Against Torture (OPCAT)**

- 7.11.1 The OPCAT system is an agreed convention, which involves monitoring places of detention by independent bodies and aims to help the State meet its obligations to prevent torture and ill-treatment of people deprived of their liberty.
- 7.11.2 With regard to mental health services, this requires occasional unannounced visits by the Ombudsmen or their delegates to any place with mechanisms of detention and possible torture, including inpatient wards and seclusion facilities.
- 7.11.3 District Inspectors are asked to be supportive of these visits and may be invited to accompany the Ombudsmen or their delegates, if available to do so.
- 7.11.4 The Senior Advisory District Inspector will be notified of all visits, and Ombudsman reports pertaining to a District Health Board will be copied to the District Inspector in the region.



## 8 Monthly Reporting and Invoicing

- 8.1 The monthly report provided by District Inspectors to the Director of Mental Health is the principal reporting and accountability mechanism by which the Director of Mental Health monitors the work of District Inspectors.
- 8.2 The monthly report should be accompanied by a covering letter identifying any outstanding issues, and an invoice. Excel and Word templates for the monthly report and invoicing are available online at [www.health.govt.nz](http://www.health.govt.nz).
- 8.3 Monthly reports must be completed by District Inspectors within two weeks after the month's end.<sup>2</sup>

### 8.4 Monthly report template

- 8.4.1 To assist the Director of Mental Health to monitor the expenditure of public funds, and to ensure the provision of timely and useful information, a standardised template must be used for the District Inspector's monthly reporting (see Appendix 6).<sup>3</sup>
- 8.4.2 The activities of the District Inspector should primarily fall into the categories set out in the template. Any outstanding activities, or anything requiring further discussion, should be included in a cover letter accompanying the monthly report.
- 8.4.3 Reports must be submitted in the format identified. Tasks should be listed by date, and 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. Information presented in this way is useful and allows the Director of Mental Health to discern trends and to follow up matters of concern.

### 8.5 Monthly reporting of section 75 investigations and section 95 enquiries

- 8.5.1 When preparing the monthly report, the District Inspector must show who made the complaint, the nature of the complaint, and minimum details about the investigation and outcome of the enquiry. More information may be covered in the monthly report to the Director of Mental Health if the District Inspector feels the need to expand on the information.
- 8.5.2 Monthly reporting for work regarding section 75 investigations and section 95 enquiries should be broken down to show each component of the District Inspector's work (see Appendix 6).

<sup>2</sup> The Ministry of Health has obligations under section 32(A) of the Public Finance Act 1989 to report on the service performance of District Inspectors. Currently, the measure is the percentage of District Inspector reports sent to the Office of the Director of Mental Health within 14 days after the month's end.

<sup>3</sup> For the most up-to-date version of the invoice template, refer to the District Inspector page of the Ministry of Health's website at [www.health.govt.nz](http://www.health.govt.nz).

- 8.5.3 From this information, the Director of Mental Health should be able to establish the time spent on District Inspector duties carried out under sections 75 and 95 of the Act.
- 8.5.4 The Ministry of Health expects any District Inspector mounting an investigation or enquiry to provide the Director of Mental Health, as a minimum, a copy of the investigation or enquiry report, which must be written in a manner that protects the privacy of individuals, the family and those closely involved with the patient.
- 8.5.5 In addition to the investigation/enquiry report, the Ministry requires 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, in the rare event that this is required for review of competence of an individual health professional.

## **8.6 Monthly invoicing**

- 8.6.1 The invoice for hours worked should be in a separate attachment submitted with the monthly report, and indicate the time spent (in hours) rather than billable units. The invoice should follow the model set out in Appendix 7.<sup>4</sup> The invoice must not contain any confidential information.
- 8.6.2 For information about the technical requirements for invoices, please see Inland Revenue. There is a brief summary of Inland Revenue's minimum requirements for invoices in Appendix 7.

<sup>4</sup> For the most up-to-date version of the invoice template, refer to the District Inspector page of the Ministry of Health's website at [www.moh.govt.nz](http://www.moh.govt.nz).

## 9 Complaints about District Inspectors

- 9.1 Occasionally the Minister of Health or the Director of Mental Health receives complaints from the public about District Inspectors. Whenever a complaint is made to the Minister about a District Inspector, the complaint will be forwarded to the Director of Mental Health. The Director will try to resolve the complaint as soon as practicable. The process for investigating complaints about District Inspectors is outlined in Appendix 8.
- 9.2 All complaints about District Inspectors will be fully examined in accordance with principles of natural justice. The District Inspector concerned will have the opportunity to respond to the complaint.
- 9.3 The Director will consider the following when assessing the seriousness of a complaint:
- failure to perform adequately the duties of the role
  - negligence of duty
  - misconduct
  - inability to perform the duties of the role
  - procedural concerns about the District Inspector's investigations.
- 9.4 If a complaint involves any of these concerns, the Director will request an investigation. The scope of an investigation will depend on the nature and seriousness of the complaint. The investigation will be undertaken by a former District Inspector and a psychiatrist of the Director's choosing.
- 9.5 Following the investigation, the Director will assess the evidence and consider the most appropriate response. Depending on the circumstances, the Director may decide to:
- attempt to remedy the situation; this may involve counselling the District Inspector
  - dismiss the complaint, or
  - ask the Minister of Health to revoke the District Inspector's appointment pursuant to section 94(7)(c) of the Act.
- 9.6 Once the Director has considered a complaint, the relevant parties (ie, the District Inspector, the complainant and/or the Minister) will be informed of the Director's decision and/or the outcome. The outcome will be fully explained to the complainant, subject to privacy interests on the part of the District Inspector and any other parties concerned.
- 9.7 Investigations into complaints about District Inspectors will be documented in accordance with section 17(1) of the Public Records Act 2005.

## 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, 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 their key worker and a family or whānau member or support person present during the meeting.
- 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 they 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 or whānau member who will assist with the procedure. The District Inspector should explain that they 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 they will arrange for one of the rostered lawyers to meet with the patient and take the patient's instructions. The District Inspector should advise the patient wishing to have a section 16 review, about 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 their responsible clinician and at least one other health professional or any other person the Judge thinks appropriate. The District Inspector should encourage the patient to provide the names of other people they think the Judge should speak with.

- 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 their 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 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 their driver's licence will be taken from them and held by the hospital, as required by the Land Transport Act, until their responsible clinician has decided they are again fit to drive, and the licence will be suspended until that time. The responsible clinician should have addressed this issue with the patient on the making of the order.
- 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/whānau 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 14A**

When advising a patient about the outcome of a final assessment under section 14, a District Inspector may find it helpful to follow the steps explained below.

- 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 they may wish to do or consider in preparation for such a hearing. The patient should be informed that they 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 and whānau 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, and 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 ongoing treatment need. The District Inspector should also point out that 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 Compulsory Treatment Order (CTO) hearing. The Judge may decide any of the following:
- that the patient is to be released from compulsory status, in which case compulsory treatment stops and the patient is discharged (under sections 18(5), 27(2), or 27(3))
  - to issue a CTO requiring the patient to undertake inpatient treatment (ie, hospital-based treatment with the provision for trial leave) (section 28(1)(b))

- to issue a CTO requiring the patient to undertake treatment in the community (a community treatment order) (section 28(1)(a)). 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 (section 15(2)).

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 any associated stigma
- 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 (such as a 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 If 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 but 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 their 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 make the following decisions:

- that the patient has an abnormal state of mind as defined in section 2 of the Act
- 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 himself or herself, and
- that a CTO is necessary. (If the patient is mentally disordered, but clearly consents to a voluntary treatment option that best addresses their mental disorder and has 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 them in the assessment process is informed about the patient's condition or circumstances.



## Appendix 3: Mental Health Review Tribunal

In order to meet the obligations under section 76(9), the District Inspector requires knowledge of the MHRT and its provisions under the Act. The following is a summary of information about the MHRT, its powers and functions.

- A3.1 The MHRT 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 and when 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 MHRT.
- A3.3 Anybody listed in section 76(7)(b) can apply for a review of the patient's case by the MHRT under section 79(1) 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 MHRT may also be eligible for legal aid.
- A3.4 Section 79 specifies that applications for review should be addressed to the convener of the MHRT (section 79(4)). The District Inspector provides the patient with the address to which the application should be sent. The address of the MHRT is:
- Mental Health Review Tribunal  
PO Box 10 407  
The Terrace  
Wellington
- A3.5 The MHRT operates to a tight timetable. Section 79(5)(b) 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 MHRT may refuse to consider an application for review if it has received one from the same patient within three months and has no reason to believe that there has been any change in the patient's condition in the intervening period (for example, the responsible clinician confirms that there has been no change in the patient's condition). The MHRT may also refuse to consider an application if the application is made by a relative or friend and the MHRT is satisfied that the application is made otherwise than in the interests of the patient (section 79(6)(b)).
- A3.7 The MHRT can decide either:
- that the patient is fit to be released from compulsory status, or
  - that the patient is not fit to be released from compulsory status.
- A3.8 Patients (and/or their welfare guardian, principal caregiver or medical practitioner) have the right to appeal to a district court against a MHRT decision within one month of the date of the decision (section 83).

- A3.9 District Inspectors should advise patients that the information required by the MHRT is similar to the evidence heard by a District Court Judge in a CTO hearing. The MHRT 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 compulsory status.
- A3.10 The procedural provisions relating to the MHRT are set out fully in Schedule 1 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 MHRT's power to co-opt persons under section 103 to be additional members of the MHRT. Such co-opted persons may include a person with specialised knowledge or expertise, a person whose ethnic identity is the same as the patient, and/or someone of the same gender as the patient. If no member of the MHRT is of the same ethnicity or gender as the patient, the MHRT must co-opt a person of the same ethnicity or gender if the patient or applicant requests it to do so (section 103(2)).
- A3.12 The District Inspector should advise the patient that the convener, or other MHRT members who assess the patient, may certify that it is in the patient's best interests to excuse them from attending the hearing. The patient may also be excused or excluded by the MHRT if they lack capacity to understand the nature and purpose of the proceedings, attendance is likely to cause the patient serious harm, or the patient is causing such a disturbance that it is not practical to continue with the hearing in their presence (clause 2 of Schedule 1 of the Act). In all other cases the patient will be present throughout the MHRT hearing.

## Appendix 4: Inquiries under section 95

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

### A4.1 Initiating enquiries

A4.1.1 Although the Act gives District Inspectors the power to initiate an enquiry 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 enquiry under section 95.

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

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

A4.1.3 A District Inspector enquiry 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 where a District Inspector enquiry has not been conducted. These were adequately addressed by internal enquiries, which made use of external reviewers. Although the Director of Mental Health was involved in these cases, it was not necessary to instigate an independent enquiry under section 95.

## **A4.2 Process for the enquiry**

- A4.2.1 The Director of Mental Health will set the terms of reference for an enquiry after seeking advice from the Ministry of Health's legal advisors and consulting with the provider concerned.
- A4.2.2 Sometimes the Director of Mental Health will appoint a District Inspector from another region to conduct an enquiry in order to preserve the relationship between the local District Inspector and the service.
- A4.2.3 The Director of Mental Health may appoint a suitable clinician to assist the District Inspector with their investigations if this is considered necessary.
- A4.2.4 The District Inspector may seek advice from the Ministry on issues of natural justice and process, but the format and process for the enquiry 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.
- A4.2.5 It is important to note that the Director of Mental Health and Ministry of Health do not see the enquiry report (or any drafts) until the enquiry is complete.

## **A4.3 Director of Mental Health: standard procedure for dealing with section 95 enquiry 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 District Health Board with a request for comments.
- A4.3.4 A copy of the report and a briefing may also 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 enquiry will naturally raise considerable media and/or public interest. The Director of Mental Health may receive an Official Information Act 1982 (OIA) 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 OIA and may only withhold information in line with the provisions of the OIA. This decision involves the balancing of the public interest in a public release of the report against the public interest in protection of confidentiality of any individual named or adversely affected by the report.

A4.4.2 The Director of Mental Health usually seeks to coordinate 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 Team works closely with other parties involved in the enquiry to coordinate media statements and public releases.

A4.4.3 Findings of any section 95 enquiry and, if requested, a copy of the enquiry report that complies with the provisions of the OIA are shared with the Health and Disability Commissioner.

## **Appendix 5: Steps to follow in order to comply with the Health Information Privacy Code when conducting investigations and enquiries under sections 75 or 95**

- A5.1 In accordance with the Health Information Privacy Code, health information includes information or classes of information about an identifiable individual that is about:
- the health of that individual, including their medical history
  - any disabilities that individual has, or has had
  - any health services or disability services that are being provided, or have been provided, to that individual
  - that individual, which is collected before or in the course of, and incidental to, the provision of any health service or disability service to that individual.
- A5.2 In accordance with the Health (Retention of Health Information) Regulations 1996, health information must be retained for 10 years.
- A5.3 During both section 75 investigations and section 95 enquiries, when collecting health information either directly from the individual service user, or from the individual's representative, the District Inspector must take such steps as are, in the circumstances, reasonable to ensure that the individual (and their representative if information is collected from their representative) is aware:
- that the health information is being collected
  - that it is being collected as part of the District Inspector's process of investigation or enquiry into whichever of the following is applicable:
    - a complaint of a breach of the service user's rights
    - a possible breach of the Act 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
  - that 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
  - that 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

- whether providing the information to the District Inspector is voluntary or mandatory (depending on the circumstances) and, if mandatory, the particular law under which it is required. (For section 75 investigations, if the service user does not provide information to the District Inspector, the District Inspector might not be able to properly investigate the complaint. For section 95 enquiries, the District Inspector will generally have the powers of a Commission of Inquiry, which include a power to subpoena and examine on oath)
- that the individual has rights to access and correct their health information under rules 6 and 7 of the Code.

A5.4 Service users and/or representatives should be advised of these facts before information is collected by the District Inspector, or if this is not practicable, as soon as practicable after it is collected. This should be done in a manner which will make the advice easily understood.

A5.5 If 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
- 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.

A5.7 District Inspectors should note that this appendix is intended as a guidance document only. Although this appendix focuses on rules 1 to 3 of the Health Information Privacy Code, District Inspectors should make themselves familiar with all of the Code's provisions.

## Appendix 6: Monthly reporting template

For consistency, the Ministry of Health requires that District Inspectors submit monthly reports in the following format. The most up-to-date monthly reporting template is available on the District Inspector's page of the Ministry of Health's website at [www.health.govt.nz](http://www.health.govt.nz).

### REPORT TO: THE DIRECTOR OF MENTAL HEALTH – MINISTRY OF HEALTH

<b>District Inspector:</b>	
<b>Report for period:</b>	
<b>Locality:</b>	

Type in information in the spaces provided. Spaces will expand as required to accommodate text.

<b>Provision of information and checking of documentation</b> Include receiving and pursuing certificates of final assessment; hospital attendances; patient discussions, including advice on legal process; the process of review; reading patient files. Describe any other necessary activities.			
<b>Attendances – section 11 certificates</b> (providing information to patients with regard to a section 16 review).			
Date	Description	Units	Travel units
<b>Attendances – section 12 certificates</b>			
Date	Description	Units	Travel units
<b>Attendances – section 14 certificates</b>			
Date	Description	Units	Travel units
<b>Attendances – on patients detained under section 29(3)(a) or (b)</b>			
Date	Description	Units	Travel units
<b>Reviews – under sections 35 and 76</b>			
Date	Description	Units	Travel units
<b>Attendances – at hearings (sections 16–30, 34, 79)</b>			
Date	Description	Units	Travel units



**Visitation and inspection**

Include visits to appropriate hospitals, services, residential facilities and community patients; inspection of records and registers required to be kept under the Act; other documents relating to patients. Describe any other necessary activities.

Date	Description	Units	Travel units

**Complaint handling and resolution**

Receiving and investigating complaints. Please describe activities.

Date	Description	Units	Travel units

**Investigations and enquiries under sections 75 and 95**

Receiving and investigating complaints. Direct client contact and directly related work. Please describe activities.

Break down to show each component of the work. Show subtitles for the following components:

- *direct client contact and related work* – itemise according to patient name, and show the appropriate section of the Act involved;
- *other work directly related to the investigation/enquiry* – for example visiting services, meeting with the Director of Area Mental Health Services, and liaising with the Ministry of Health.

**Section 75**

Date	Description	Units	Travel units

**Section 95**

Date	Description	Units	Travel units

**Meeting attendances**

(Including District Inspector meetings, Director of Area Mental Health Services meetings, and meetings with the Charge Nurse)

Date	Description	Units	Travel units

**Other District Inspector activities**

(eg, preparation of monthly report, advising District Inspectors). Please describe activities.

Date	Description	Units	Travel units

<b>Totals</b>	<b>Units</b>	<b>Hours**</b>
Attendances – section 11 certificates		
Attendances – section 12 certificates		
Attendances – section 14 certificates		
Attendances – section 29(3)(a) or (b)		
Reviews – under sections 35 and 76		
Attendances – at hearings (sections 16–30, 34, 79)		
Visitation and inspection		
Complaint handling and resolution		
Section 75 attendances		
Section 95 attendances		
Meeting attendances		
Other District Inspector activities		
Travel		
<b>** Hours = total units x 0.1 (6/60 )</b>		

This monthly reporting template was introduced for consistency in reporting by District Inspectors. However, the Office of the Director of Mental Health recognises that the duties of District Inspectors are expansive. It is acknowledged that not all of the activities of a District Inspector will be clearly captured in the template categories above. Please note that these categories are intended to be inclusive. It is expected that reports will vary and a number of activities not explicitly mentioned in the categories above will be included in some reports when appropriate.

## Appendix 7: Invoicing requirements

For consistency, the Ministry of Health requires that District Inspectors invoice in the following format. By law, the Ministry is unable to process invoices that are technically incomplete. As original invoices are retained by the Ministry as financial records there should be no personal or confidential information in the invoice. The most up-to-date template for this invoice is available on the District Inspector's page of the Ministry of Health's website at [www.health.govt.nz](http://www.health.govt.nz).

### Layout for GST invoice to be submitted by District Inspectors of Mental Health

DI name, address, and contact details, or print on custom letterhead		
<b>Tax Invoice – District Inspector of Mental Health</b>		
To: Director of Mental Health Ministry of Health Private Bag 5013 Wellington 6145	GST no.	
Date:	Invoice no.	
<b>DI duties as reported for:</b>		
	<b>Hours</b>	<b>\$ amount</b>
Attendances – section 11 certificates*		
Attendances – section 12 certificates*		
Attendances – section 14 certificates*		
Attendances – section 29(3)(a) or (b)*		
Reviews – under sections 35 and 76*		
Attendances – at hearings (sections 16–30, 34, 79)*		
Visitation and inspection*		
Complaint handling and resolution*		
Section 75 attendances*		
Section 95 attendances*		
Meeting attendances*		
Other District Inspector activities*		
Total hours	@ \$170.00 p/h	
Travel hours	@ \$85.00 p/h	
	Subtotal	
	Plus GST (15%)	
Plus disbursements (attach receipts):		
• Phone calls	\$	
• Postage	\$	
• Faxes	\$	
• Taxi fares	\$	
• Stationery	\$	
Total disbursements	\$	
Mileage allowance	@ \$0.70 p/km	
Total due		

\* These hours should reflect the units in the monthly report.

Please note: this invoice must not contain any confidential information.

### **Minimum requirements for invoices (Inland Revenue)**

For services worth more than \$1000 (including GST), the tax invoice must clearly show:

- the words “tax invoice” in a prominent place
- the name (or trade name) and GST number of the supplier
- the name and address of the recipient of the supply
- the date the invoice was issued
- a description of the goods and/or services supplied
- the quantity or volume of the goods and/or services supplied (eg, litres of petrol, hours of labour)
- the amount, excluding tax, charged for the supply
- the GST and the total amount payable for the supply.

# Appendix 8: Process for complaints about District Inspectors

