



Guidelines for the Safe Transport of Special Patients in the Care of Regional Forensic Mental Health Services

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1 Introduction

These guidelines have been developed to provide general guidance to Regional Forensic Mental Health Services (RFMHSs) and other government agencies who need to safely transport special patients between secure forensic mental health facilities and other services, including courts, prisons and medical appointments in general hospitals. They may also provide general guidance to the Forensic Coordination Service – Intellectual Disability (FCS-ID) in some circumstances.

They reflect the requirements in section 53A of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (Mental Health Act), which was introduced in 2021 by the Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021. They should be read in conjunction with Part 4 of the Mental Health Act. These are not clinical guidelines but rather are issued under section 130(1)(a) of the Mental Health Act and are intended to support the lawful application of section 53A of that Act.

Under section 53A, the custodian of a special patient is the person in charge of the hospital the patient is in, as described in section 113 of the Mental Health Act. This authority is delegated to the Directors of Area Mental Health Services (DAMHS) of RFMHSs under section 99B of the Act. Therefore, the responsibility for the safe transportation of special patients under the provisions of section 53A lies with RFMHSs.

It is important to note that before a section 11(1) notice is given, the person being assessed is the responsibility of Ara Poutama Aotearoa/Department of Corrections (Ara Poutama) if they are in custody. If a section 11(1) notice is given to the proposed patient at a prison, the person is then deemed to be a special patient for the purpose of transport to hospital.

1.1 Challenges with the term ‘special patient’ and ‘prisoner’

Many people around Aotearoa New Zealand disagree with the use of the terms ‘patient’, ‘proposed patient’, ‘special patient’ or ‘prisoner’. Such terms can reflect a stigmatisation of people who experience mental illness to the extent that they are at risk of being recognised and treated as people who are managed through custodial care medical treatment rather than as individuals with choices and autonomy.

Preferred terms may include ‘consumer’, ‘service user’, ‘tangata whai ora’ or detained person. However, under the Mental Health Act and Corrections Act 2004 (Corrections Act), ‘patient’, ‘proposed patient’, ‘special patient’ and ‘prisoner’ each have a specific legal meaning, so we have continued to use these terms throughout these guidelines to reflect that specific legal meaning.

2 Underlying principles, scope and legal authority

2.1 Statement of principle

When transporting a special patient, the focus should be on the welfare of that person while maintaining the safety of others. This principle applies irrespective of whether the RFMHS, Ara Poutama or a contracted private provider, Police or another government agency are providing the transport. Police involvement in the transportation of special patients is not common and will generally involve situations where all other least restrictive options have been investigated first.

Detailed discussions and planning are necessary between RFMHS and the transporting agency to ensure that all safety and comfort needs are met. RFMHSs have specific skills in managing people with serious mental disorders. The legal custody for special patients in the care of an RFMHS, including during transport, remains with the RFMHS.

Ara Poutama officers have the experience to transport certain special patients and special care recipients between RFMHSs and court or other external hospital facilities for urgent medical appointments or treatment.

These guidelines replace the 2019 Memorandum of Understanding with Ara Poutama and should provide a consistent approach to applying the provisions of section 53A of the Mental Health Act. It should be noted that section 53A specifically relates to transportation.

These guidelines do not address issues relating to bed occupancy, bed shortages or working relationships between the related agencies. RFMHS and Ara Poutama still need to have processes set up in those local areas for communication and problem solving, such as regular interagency meetings and escalation protocols to manage issues that arise from the day-to-day provision of services.

2.2 Scope of these guidelines

These guidelines specify the conditions required for invoking section 53A of the Mental Health Act, the steps that need to be taken and the documentation required when transporting special patients.

They apply to all RFMHSs, FCS-ID, Ara Poutama or contracted private transport providers, Police or other government agencies that provide safe transport for special patients. They also apply to hospitals and other inpatient mental health services involved in the interim custody of a special patient (such as during court processes).

Other people or entities, such as compulsory care coordinators responsible for the care of special care recipients, may also find these guidelines helpful, however, the authority under section 53A of the Mental Health Act only relates to people who are defined as special patients under the Act.

Audio-visual link (AVL) technologies may reduce the need for transportation and potential use of restraint in some instances. However, such technologies will not address the need to transport some special patients for emergency or urgent medical or mental health care. In addition, with respect to court hearings or trial appearances, there may be situations where AVL technologies are not possible or desirable.

Special patients who are potentially affected by the guidelines are defined in section 2 of the Mental Health Act and include the people described in table 1 below.

Table 1: People defined as special patients, by Act and section

Act and section defining 'special patients'	Explanation
Mental Health Act section 45	<p>A person who is liable to be detained in a hospital following an application under s45(2) and who has not ceased, under s48, to be a special patient.</p> <p>Prisoners who are subject to assessment for mental disorder, including:</p> <ul style="list-style-type: none"> • those who are not currently subject to a compulsory assessment or treatment order, who require assessment • those who have already been assessed under s11–s15 of the Mental Health Act
Mental Health Act section 46 (informal)	<p>A person who is liable to be detained in a hospital following arrangements made under s46 and who have not ceased, under s48, to be a special patient</p> <p>People who are identified as being able to benefit from psychiatric treatment in RFMHS and who consent to being admitted to the RFMHS.</p>
Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPMIP ACT) s23, s42, s44, s35 or s38	<p>People who have been remanded by the court to a hospital or secure facility, for instance, under s23(2)(b), 42, 44(1), 35(2)(b) or 38(2)(c) of the CPMIP Act.</p>
CPMIP Act section s34(1)(a)(i), (Hybrid mental health order)	<p>A person who is liable to be detained in a hospital under s34(1)(a)(i) Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPMIP Act) and who has not ceased, under s48, to be a special patient, (Hybrid mental health order)</p> <p>A person who is convicted and ordered by the court to be detained as a special patient.</p>

Act and section defining 'special patients'	Explanation
CPMIP Act under s35	A person who is remanded to a hospital or a care facility for assessment and/or are waiting for a compulsory care order from the court under section 38(2)(c) of the CPMIP Act. People under section 35(1) of the CPMIP Act are defined as special patients until a compulsory care order is made by the Family Court.
CPMIP Act section 38(2)(c)	A person who is liable to be detained in a hospital or secure facility under s38(2)(c) for the purpose of an assessment for any period not exceeding 14 days.
CPMIP Act s24(2)(a)	a person who is liable to be detained in a hospital under s24(2)(a) after being found unfit to stand trial or insane
Criminal Procedure Act 2011, section 169 under s of the	A person who is liable to be detained in a hospital under s169 pending a trial where the court is satisfied that the defendant is mentally impaired and requires detention in hospital or a secure facility. The person is remanded by the court to the RFMHS or a secure facility, pending their trial.
Armed Forces Discipline Act 1971, section 191(2)(a)	A person tried by a Court Martial, and is found to be unfit to stand trial or acquitted on account of insanity and is detained in a hospital as a special patient
Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (IDCCR Act), section 136(5)(a)	Where a special care recipient becomes subject to compulsory assessment or treatment under the Mental Health Act, the special care recipient must be held as a special patient in a hospital under the Mental Health Act. Any existing compulsory care order is suspended until the person's status is changed in accordance with either the Mental Health Act or CPMIP Act.

Occasions when these patients may need to be transported from the RFMHS to another service include:

- those transferred under s49 or granted leave under s52 of the Mental Health Act to attend medical or dental appointments or urgent medical treatment in a general hospital or specialist clinics for health treatment
- court in relation to charges against the patient, or as a witness
- those being returned to prison under s47 of the Mental Health Act, where it is no longer necessary for the patient to be treated by the RFMHS
- those who are required to appear before the court or the New Zealand Parole Board (NZPB).

2.2.1 Additional considerations relating to section 45 applications for assessment

Section 53A of the Mental Health Act only authorises the transportation of a special patient as outlined in the table above. This includes a person who is liable to be detained in a hospital following either an application under section 45(2) of the Mental Health Act or arrangements made under section 46 of the Mental Health Act.

In the situation where a detained person is already subject to an assessment examination process or compulsory treatment order as defined in section 45(3) and section 36 does not apply to the order because they are still on remand, that person remains subject to the process or order. This will require the RFMHS, DAMHS and prison superintendent or delegate to discuss and agree on a plan to transport the prisoner to hospital on a case-by-case basis.

Where a person is already subject to an assessment examination process or compulsory treatment order, the custody will depend on what parties are involved in the transportation.

If the person is not already subject to an assessment examination process or they do not already have a compulsory treatment order in place, then the procedure for the section 45 assessment is identical to the applicable assessment for any other person who is not in prison, but the procedure will be subject to the modifications under section 45(4). The modifications are that the assessment examination shall take place either in the institution (prison) within 48 hours after receipt of the application or, if that is not practicable, in a hospital within 72 hours after receipt of the application.

A notice (in accordance with section 11(1)) from a mental health practitioner who believes on reasonable grounds that the proposed patient is mentally disordered is sufficient authority for the removal of the detained person from the institution to a hospital. Until this notice is given, the person is to continue to be in the legal custody of Ara Poutama (the person whose custody they were in under the Corrections Act 2004) even if they are absent from the institution. The person ceases to be in the custody of Ara Poutama when the notice is given.

However, if a person in custody who is already subject to an assessment examination process or compulsory treatment order needs transportation to hospital for urgent treatment under section 45(2) (not defined as a special patient under section 2 of the Mental Health Act), the person remains in the custody of Ara Poutama during transportation.

If the person in custody who is subject to a section 45(2) application requires assessment in hospital, it is likely that the existing compulsory assessment or treatment will be an outpatient assessment under sections 9–16 or community treatment order section 29 of the Mental Health Act.

A person in custody who is subject to a section 45(2) application and requires assessment in hospital may be on remand while subject to assessment under sections 9–16 or a compulsory treatment order while either:

- being absent without leave from a mental health inpatient unit
- following an offence, being committed in a mental health inpatient unit
- being subject to a community treatment order.

If the existing compulsory assessment or treatment is as an outpatient assessment under sections 9–16 or community treatment order section 29 of the Mental Health Act, it is important to ensure that, in addition to section 45(2), a responsible clinician will assess the patient and either give a written notice to the patient directing change from outpatient to inpatient status (sections 11(3), 13(3) or 29(3)). This will ensure that

the person in charge of the hospital is able to detain the patient under the provisions of section 113 of the Mental Health Act.

Another option in these circumstances is for Ara Poutama, with the consent of the detained person, to make arrangements for that person to be admitted to and detained in hospital under the provisions of section 46 of the Mental Health Act.

It should be noted that section 66 of the Act confirms that every patient is entitled to medical treatment and other health care appropriate to their condition. Any breach of this right can be referred to a district inspector for investigation under the provisions of section 75 of the Act. Therefore, all attempts to resolve the issue must be a priority at the time of assessment.

2.3 Legal authority for exercise or change of custody

The Mental Health Act provides authority for the detention of special patients in hospital. It also states that every patient 'is entitled to medical treatment and other health care appropriate to his or her condition' (section 66). There are times when such treatment will need to be undertaken outside a secure forensic mental health unit. Leave is often sought for special patients so that they can access appropriate health care.

Special patients under section 45 or section 46 of the Mental Health Act and section 24(2)(a) of the CPMIP Act must not be prevented from attending relevant medical appointments or NZPB or court hearings unless there are specific risk management issues that preclude the ability to transport.

The CPMIP Act provides for the transfer of people detained in a hospital or secure facility for assessment (section 38(2)(c)) to court, penal or police custody (section 42) for the three purposes of:

1. pending a hearing or trial of a charge against the person
2. sentencing of the person
3. an appeal against the conviction of the person or against a sentence or order imposed on the person.

Section 53A of the Mental Health Act provides for the transport of special patients. A special patient custodian, that is, the chief executive of the facility where the special patient is held, may authorise in writing the transport of the special patient by a government agency for the purposes explained in the previous section. This role may be delegated to the DAMHS. The agreement must include a transport management plan that has been approved in writing by the Director of Mental Health and Addiction.

The custodian of a special patient is responsible for transporting that patient to and from various appointments, including court and parole hearings and health assessments. RFMHSs have legal custody of special patients under section 45 of the Mental Health Act once a section 11(1) notice has been delivered to the special patient.

That responsibility includes during transport between hospital and court or another agency. A RFMHS's responsibility for section 45 and 46 special patients ends when custody passes to Police or Ara Poutama, such as under the provisions of section 47 of the Mental Health Act, when the patient is deemed fit to be released or discharged back to prison to continue to serve the remainder of a sentence.

It is important to note that before the section 11(1) notice is given, the person is the responsibility of Ara Poutama if they are in custody. If a section 11(1) notice is given to the proposed patient at a prison, the person is then deemed to be a special patient for the purpose of transport to hospital. If the section 11(1) notice is not given at a prison but the person is to be transported to RFMHS for an assessment examination under section 9(3), they are transported as a prisoner. For clinical safety reasons, section 11 assessments should occur in a hospital setting.

A special patient being held in hospital for medical or surgical treatment remains the responsibility of the RFMHS, as they are on leave from the service but remain in the legal care of the RFMHS. This responsibility does not preclude the RFMHS from seeking the support of Ara Poutama or the Police for the purposes of transport to hospital. The authority of section 53A only includes the transportation to or from hospital and escorting the special patient to and from a vehicle. Any additional security arrangements must be made between RFMHS and the general hospital services policies relating to the provision of security for those hospital services.

3 Procedures for transport

3.1 Making transport arrangements

Arrangements for transporting special patients require the custodian of the special patient to agree in writing that another government agency may transport the patient for the purpose of Part 4 of the Mental Health Act or for attendance at court or NZPB hearings. The use of assistance from another government agency to transport special patients is not necessary in all cases and should only be required when all other least restrictive alternatives have been examined.

Least restrictive alternatives could include:

- the use of hospital transportation
- the use of AVL technologies where face-to-face attendance is not practicable
- adjournment when there is clinical risk or patient acuity is high.

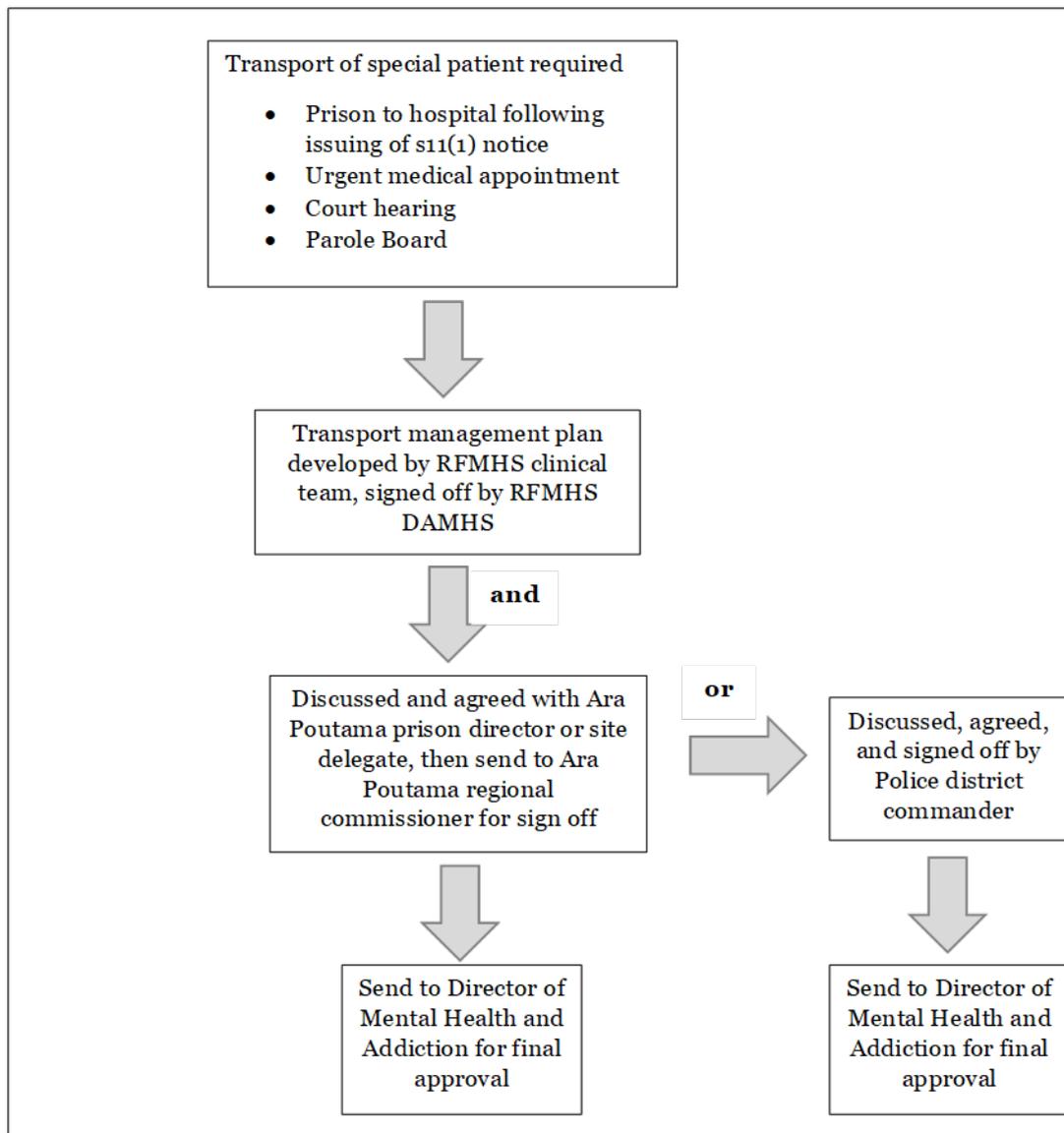
The patient should be told of all transport arrangements unless there is a specific concern related to clinical safety, the risk of violence or risk of the patient absconding (with or without external assistance). In cases where the patient has not been told about transport arrangements, the reason for this should be clearly documented.

The DAMHS is delegated the authority as custodian of the special patient to enter into an agreement with the Ara Poutama Prison Director Regional Commissioner (or their delegate), Police District Commander or other government agency. Details of any agreement between a DAMHS and any of the abovementioned parties will vary according to need. A copy of the delegation should be sent to the Director of Mental Health and Addiction.

Any agreement must be in writing, and for any patient before transport by another agency, there must be a transport management plan approved in advance by the Director of Mental Health and Addiction.

Any concerns about transport management plans can be discussed with the Director of Mental Health and Addiction.

Figure 1: Summary of the process for the safe transportation of special patients



3.2 The transport management plan

The transport management plan (transport plan) will specify the details of the transport of a special patient from a specific facility (prison or mental health service) to their destination (RFMHS, medical appointments or treatment at other hospitals, or for attendance at court or NZPB hearings).

The transport management plan may authorise:

- the restraint of a transported special patient that is the least restrictive option for the safety of both the patient and the public
- the use of force that is reasonably necessary in the circumstances.

The transport management plan must:

- set out the grounds that satisfy the restraint of a transported special patient and any other use of force
- state the type of restraint and any other use of force that is authorised
- state any additional type of restraint or use of force that is authorised in the event of escalation of risk to any person during transport.

While transporting special patients, the use of restraint or force will have been deemed necessary for the protection of the patient and the public to mitigate the risk of escaping detention and the potential harm from serious criminal re offending behaviours and retraumatising victims.

Before the special patient is transported, the RFMHS must specify in the transport management plan (see also Appendix 1: Transport management plan form):

- the special patient's demographic details
- the legal status of the plan (including Act and section)
- the risks (self-harm, suicide, risk of harm to the public or to a particular person, risk of absconding and/or any physical health concerns must be documented)
- the forensic and Ara Poutama staff escorts (Staff from the RFMHS will need to accompany the special patient while in transit, particularly if the patient requires cultural assistance. The escort team must include a registered nurse. Escorting clinical staff should be able to observe the special patient directly during transportation. This could include face-to-face or through a viewing window or using closed-circuit camera technology (CCTV).)
- whether restraint may be required, what restraint options will be considered and justification for the use of restraint
- any use of force that is authorised, including in the event of escalation of risk to any person during transport
- long-distance travel (Ara Poutama operating procedures refer to 'long-distance' travel as involving a period of over four hours. This appears to be a useful definition, as it is based on time (rather than distance) and is consistent with processes used by Ara Poutama, as a regular transport provider for such special patients and special care recipients)
- if Police or Ara Poutama involvement is required
- a description of required actions if a change in circumstances or incident arises
- cognitive/neurodevelopmental considerations if there is a dual disability for the special patient and/or special care recipient
- language or communication needs, particularly for people who do not have functional or fluent English and people who are deaf
- gender and cultural considerations.

Further details of any agreement between the forensic mental health service and Ara Poutama, Police or another government agency will be made on a case-by-case basis.

The RFMHS will approve the transport management plan and submit it to Ara Poutama, Police or another government agency for their approval. Subsequently, the Director of Mental Health and Addiction will need to approve the plan in writing.

3.2.1 Medical emergency situations

In a medical emergency, the full requirements of a section 53A transport management plan may not be possible as all of the above information may not be available at the time. The priority is to ensure the special patient receives life-preserving medical attention immediately. In these situations, the RFMHS facility should arrange for 111 emergency services, ambulance and or Police assistance if required.

The special patient's responsible clinician or RFMHS staff must notify the DAMHS as soon as practicable of the situation and discuss the transportation requirements, including the need for restraint or police assistance to support clinical staff to transfer the patient to a general hospital emergency department.

The DAMHS should contact the Director or Deputy Director of Mental Health and Addiction as soon as practicable and provide the patient details, a summary of the situation, background, assessments undertaken and recommendations regarding the transportation plan, including whether Police assistance is required and whether restraint is deemed necessary. Following the discussion with the DAMHS, the Director or Deputy Director-General can approve verbally, so as not to delay treatment. As soon as practicable, the DAMHS should document this verbal approval and send it back to the Director, or Deputy Director, who will confirm the approval in writing (which can be via email).

3.2.2 Risks

A risk assessment must be completed for all patients who are to be transported by Ara Poutama, Police or another government agency before the patients are transported. Some of the information required for the risk assessment is summarised on the transport management plan template, which will be provided to escorting clinical staff before transport. The risk assessment should consider the patient's mental state, risk of harm to the patient themselves and others, and the risk of the patient absconding. It should also consider any infection prevention and control measures that may be required. If Ara Poutama, Police or another escorting agency is supporting the transportation of a special patient, they will need to be given the same information about the patient and any other relevant information to allow the transport to be conducted safely.

RFMHS will need to consider any privacy implications related to sharing of this information. Usually, these issues should not present difficulties as, in such instances, any information shared will be required for a lawful purpose or function under the provisions of section 53A of the Mental Health Act. However, the information provided should only be information that is necessary to prevent or lessen a serious threat to

public health or public safety or the life or health of the patient concerned or another person.¹

3.2.3 Clinical staff escorts

In all cases, it will be necessary for staff from RFMHS to accompany the patient while in transit. Decisions about the number and gender of the staff involved, as well as cultural support provided will be based on assessed risk, safety considerations and the gender and ethnicity of the patient.

All transport plans should consider cultural safety for the patient. This may require a cultural staff escort to accompany the patient as well.

3.2.4 Vehicle

When RFMHS undertakes to transport a special patient in a hospital service vehicle, key points to consider are:

- whether the vehicle can ensure staff and patient safety (This may include assessing any fittings that could be used as a weapon or a means of self-harm and mitigating the risks relating to those fittings.)
- mandatory safety requirements (for example, seatbelts, first-aid kits), any exemptions that may be required and an explanation for the exemption
- other safety requirements, including means of communication
- any infection prevention and control measures that may be required.

In situations where Ara Poutama or security firms are requested to support transportation of special patients, they have their own policies and requirements for vehicles.

3.2.5 Long-distance travel (lasting over four hours)

Long-distance travel is not common for special patients, however, if long-distance travel is required, RFMHS and the transportation agency should discuss whether it would be more appropriate to consider using air transportation.

If air transportation is not possible or the planned trip is likely to take up to four hours, it is necessary to pay attention to the comfort needs of both the patient and escorting staff. For long-distance trips, the patient and escorting staff should have scheduled breaks in order to meet wellbeing and health and safety requirements. Detailed discussion and planning are necessary between RFMHS and transporting agency to ensure safety comfort needs are met.

Additional issues to consider are as follows.

- Will overnight accommodation be required?

¹ Privacy Act 2020, section 22 Information privacy principle 11(1)(f)

- If so, what arrangements need to be made to ensure the accommodation is safe and secure for both the escorting staff and the patient?
- The custodian of the special patient will be required to meet the costs associated with this.
- Does the patient have physical needs that require regular clinical intervention (for example, diabetes) or administration of regular medications or do they present any other clinical risks?

It should be noted that Police district boundaries may need to be crossed in some situations. The transport management plan should also consider any implications of crossing district boundaries.

3.2.6 Transport by air

If it is not possible for AVL technology to be used, RFMHSs may, on the rare occasion, need to transport patients by air. This is one of the situations in which restraints may be required. In such cases, section 6 Here taratahi (restraint and seclusion) of Ngā Paerewa Health and Disability Services Standard NZS 8134:2021 (Ngā Paerewa) applies (Ministry of Health and Standards New Zealand 2021).

Transport by air will always require a minimum of two escorting staff. The transporting airline should be advised of the reason for transport and the arrangements that have been made for the safe escort of the patient.

It is important to note that Air New Zealand requires transported people to be unrestrained (no handcuffs) in the terminal, where they will make a final determination on the use of restraints or if, in fact, they will transport the person. This may cause some issues, particularly when flying from Air New Zealand's provincial hubs, where alternative transport options may be limited.

If this level of restraint is necessary, alternative arrangements will be required and could include organising a private charter flight, with reasonable prior notice. Ara Poutama have experience with this. These arrangements should be discussed by RFMHS and the prison director when developing the transport plan.

Please note that the use of air transport to move a special patient will require approval by the Director of Mental Health and Addiction under section 53A of the Mental Health Act, and the documentation and approval process set out in these guidelines will apply.

3.2.7 Consideration of specific individual needs

Patients may need to use or change sanitary protection, including menstrual products. These should always be available and a stop should be arranged specifically to ensure hygiene needs can be accommodated. These needs apply irrespective of the length of the journey and may arise at any time.

Particular consideration must be given to the safety, risks and needs of pregnant and elderly patients and patients with physical disabilities during transport and while away from the hospital. In particular, the use of restraint is discouraged in the later stages of

pregnancy. Ara Poutama do not use mechanical restraint on women who are in labour, or past 30 weeks gestation.

Particular consideration must also be given to maintaining the patient's or staff member's dignity by providing them with safe toileting opportunities and including the ability to stop and support any patient experiencing nausea or other illness.

4 Use of restraint or any other use of force

Section 53A of the Mental Health Act sets out the requirements for restraining a person during transportation and any other use of force. It is important to note that restraint or other use of force in these cases is not related to the presence of a mental health condition. Rather, it is related to offending or risk-taking behaviour and attempts to escape that pose a serious risk to the safety and wellbeing of others, including the special patient, escorting staff, the public or previous victims.

Section 53A(6) states transport includes escorting a special patient to and from a vehicle.

In addition, section 122B(2A) of the Mental Health Act states that a person permitted to restrain a transported special patient or to use any other force under section 53A may use 'such force as is reasonably necessary in the circumstances'. In all situations where restraint or the use of force is deemed necessary, it must be clear that it is the least restrictive option available for the safety of both the patient and the public.

Whether the use of restraint on a person is justifiable will depend on the circumstances of each individual case. In each case, there must be an assessment of clinical and safety risks and examination of alternatives to restraint. Any use of restraint should be considered as a last resort where it is not safe to use alternative interventions or strategies.

Assistance may be found in section 6 Here taratahi (Restraint and seclusion) of Ngā Paerewa (Ministry of Health and Standards New Zealand). Ngā Paerewa defines restraint as 'the use of any intervention by a service provider that limits a person's normal freedom of movement'.

Primarily, services should ensure they have transport policies in place that actively minimise the use of restraint and other uses of force and comply with these guidelines. Services should ensure that the patient is safe for transport and that the patient is not carrying any dangerous objects. This may necessitate a search on entry and exit, as per Ara Poutama, Police and RFMHS protocols.

The type of restraint and any other use of force used is most likely to be specified by the transport agency not RFMHS. Rather, the RFMHS would assess the risks of the transport and on that basis agree whether another agency needs to assist and, if so, then discuss with that agency what type of restraint (such as physical/mechanical restraint) is reasonably necessary in the circumstances. This would then be set out in the agreed transport management plan.

Any further guidance about use of mechanical or physical restraint or other use of force should be taken from Police or Ara Poutama.

In order to minimise the risk to the patient, each RFMHS should have restraint guidelines in place that clearly identify:

- the restraint approval process
- specific types of restraint that can be used
- processes to be used when considering restraint
- processes for reviewing the use of restraint on each occasion that it is used.

RFMHS staff must have a sound knowledge of the key principles, legal requirements, guidelines and the local health service provider's policies and procedures relating to restraint. Special patients who require restraint must be observed by RFMHS staff at all times.

4.1 Approval of use of restraint and other use of force by third parties

Ara Poutama has a policy and procedures regarding the restraint and other use of force on prisoners who are being transported. These procedures include cases where exceptions can be considered, such as after a health practitioner has assessed that restraint is not suitable for the prisoner.

Although the procedures relate to prisoners rather than patients, they may be a useful reference for RFMHS staff in working with Ara Poutama staff. *Custodial Practice Manual* (CPM) (Department of Corrections 2017) can be accessed from the Ara Poutama website.

Arrangements for restraint and other uses of force can only be entered into with the prior approval of the Director of Mental Health and Addiction (to be given on a case-by-case basis). Failure to obtain this approval may result in an incident that causes harm to either the patient, escorting staff or a member of the public.

5 Competencies of staff accompanying special patients during transport

RFMHS staff who accompany special patients during transportation to courts and other locations should have a health qualification and appropriate experience, such as in working with forensic or special patients, that enables them to recognise changes in mental status and clinical risk. RFMHS staff should also have training in de-escalation techniques and the ability to respond to a physical health problem.

It is also strongly recommended that RFMHS staff who accompany special patients be trained and competent in the use of restraint procedures such as those contained in the Safe Practice Effective Communication (SPEC) programme.²

RFMHS staff must also have cultural competencies and be able to ensure cultural safety during the transport of patients. RFMHS should work in partnership with Māori health workers to meet the principles and obligations of Te Tiriti o Waitangi in this regard. In cases when patients require cultural assistance, RFMHS should facilitate a cultural worker being included as one of the escorting staff.

All Ara Poutama staff who would take part in this type of transport have basic first aid training and specific skills and knowledge to safely manage people who require transportation. This includes having training in control and restraint procedures, as well as knowledge of de-escalation, cultural and gender considerations.

² SPEC is a four-day training course that supports best and least restrictive practice in mental health units. There is a national governance board that meets regularly to oversee the implementation and development of SPEC throughout New Zealand. For more details on the programme, see the webpage Safe Practice Effective Communication on Te Pou website at tepou.co.nz/initiatives/reducing-seclusion-and-restraint/safe-practice-effective-communication

6 Patients who abscond or present a threat to others

Some patients may be assessed as presenting a high risk of absconding or a serious risk to others. RFMHS staff and the escorting service (if used) should be fully briefed on these risks before any transport occurs. The RFMHS should also work with the escorting service to plan for risks to be managed appropriately.

Section 53 of the Mental Health Act deals with the escape and absence without leave of a special patient and enables that patient to be retaken at any time if they escape.

Section 53: Escape and absence without leave

Any special patient who escapes, or who breaches any condition of leave, or who fails to return on the expiry or cancellation of any period of leave may be retaken at any time by the Director, or by the Director of Area Mental Health Services, or by a duly authorised officer, or by any constable, or by any person to whom the charge of the patient had been entrusted during the period of leave, and taken to the hospital from which the patient escaped or was on leave or to any other hospital specified by the Director.

If a special patient escapes or becomes absent without leave, Police should be notified immediately, and the relevant service provider's missing persons of concern (MPOC) policies should be invoked.

Sections 122A and 122B of the Mental Health Act also provide guidance on these powers and on the ability of a person who 'takes or retakes' a special patient to use reasonable force.

Section 122A: Certain sections of Crimes Act 1961 apply to powers to take and retake

Sections 32(1), 38(4)(d), 40(2), 41(4), 41(5), 41(6), 50(4), 51(3), 53, 109(1), 109(4), 110C(2), 111(2), and 113A contain a power to take or retake a person, a proposed patient, or a patient. In respect of each of these powers, sections 30, 31, and 34 of the Crimes Act 1961 apply –

- (a) as if the power were a power of arrest; and
- (b) with any necessary modifications.

Use of force

Section 122B of the Mental Health Act authorises a person who is exercising a specified power in an emergency to use such force as is reasonably necessary in the circumstances. The powers are:

- a power to take or retake a person, proposed patient, or patient in any of sections 32(1), 38(4)(d), 40(2), 41(4), 41(5), 41(6), 50(4), 51(3), 53, 109(1), 109(4), 110C(2), 111(2), or 113A:
- a power to detain a person, proposed patient, or patient in any of sections 41(3), 41(4), 41(5), 109(4), 110C(2), 111(2), or 113:
- a power to enter premises in either of sections 41(2) or 110C(1).

The use of force should always be considered a last resort. Clinicians should be able to demonstrate that they considered and attempted conflict resolution and de-escalation approaches before using restrictive practice.

For the purpose of these guidelines, we define 'Force' to include every touch of a person for the purpose of compelling or restricting movement or administering treatment. It will normally be appropriate for clinicians to use minimal force when exercising one of the powers listed under sections 122A and 122B of the Mental Health Act (see above). 'Minimal force' means light or non-painful touching, for example, to guide a person towards a building or room or to help a person into or out of a vehicle³.

There is a clear division of roles between mental health practitioners, Police officers and Ara Poutama officers. A mental health practitioner is responsible for the patient; Police for keeping the peace and maintaining safety and Ara Poutama for protecting the public.

Section 122B(2A) of the Mental Health Act provides that a person permitted to restrain a transported special patient or use any other force under section 53A 'may use such force as is reasonably necessary in the circumstances A person permitted to restrain a transported special patient or use any other force under section 53A may use such force as is reasonably necessary in the circumstances'.

When force is used while exercising a power under the Mental Health Act, an assessment of the patient and staff must be undertaken as soon as practicable to determine if there are any injuries sustained from the use of force. If there are any injuries that need medical attention, the medical care should be arranged as appropriate. Following this, a mental health practitioner must complete a reportable event log, recording the circumstances, and forward the log to the DAMHS as soon as practicable. A log for this purpose should comply with the RFMHS service provider's reportable event policy and should include as a minimum:

- the date, time and place that the force was used
- why force was required, including details of de-escalation attempts
- what type of force was applied and by whom
- any injury to patients or staff members involved
- any action or follow-up required from using the force.

³ Ministry of Health. 2021. Manatū Hauora Ngā Pirihiimana o Aotearoa: Memorandum of Understanding between the Ministry of Health and New Zealand Police. Wellington: Ministry of Health.

7 Police involvement

Police can only be used to transport a special patient under an agreement under section 53A of the Mental Health Act. Section 53A permits the custodian of the special patient to enter into an agreement to transport the special patient and that agreement gives authority to the Police to transport and restrain.

Police involvement in the transportation of special patients is not common and will generally involve situations where all other least restrictive options have been investigated first.

All transportation of special patients should involve direct discussion between RFMHS and the agency they are requesting assistance from. Details should be contained in the transport management plan based on the risk assessments that have been undertaken.

It is not the responsibility of Police to transport special patients once those patients are in residence at a RFMHS except in certain circumstances, negotiated on a case-by-case basis. Police may sometimes be asked to provide an escort for a particular special patient. Factors leading to a request for Police escort may include:

- a high public profile of the offence, offender or defendant
- the seriousness of the (alleged) offence
- a high degree of risk arising from the behaviour of the patient (for example, risk of absconding or assaults or a history of extreme violence)
- the risk to the patient from members of the public.

Provision of Police escorts should be agreed between the DAMHS, as custodian of the special patient, and the senior Police district commander or their delegate.

If a patient is appearing in a court outside their area of residence, the escort may need to be negotiated between Police districts, and Police should receive as much advance notice as possible. However, the use of AVL technology should be considered in order to avoid unnecessary transportation.

8 Record keeping

The RFMHS should keep basic records of transport, including:

- date(s) of transport
- patient name and legal status
- length of time away from hospital
- risk assessment
- physical or mental health issues and their proposed management of those issues
- security measures undertaken, including the justification for and use of force and restraint (including, where restraint or any other force was used, the type of restraint or force used and for how long)
- incidents or events while absent from the RFMHS
- actual time away from hospital
- any consultation with whānau and cultural experts.

Appendix 1:

Transport management plan form

Transport Management Plan (M.04.01. Form.03a)

Transport Management Plan for Special Patients* and Special Care Recipients

(To accompany M.04.01. Form.03, completed by Ara Poutama Aotearoa/Department of Corrections)

Information disclosed is relevant to ensuring the safety and security of the patient, staff and/or public.

Patient details – Regional Forensic Mental Health Service (RFMHS) or Forensic Coordination Service – Intellectual Disability (FCS-ID) staff to complete⁴

Surname:	
First name:	
Date of birth:	
Legal status (including Act and section):	
Person Record Number (PRN): (Ara Poutama use)	

Transport plan details – RFMHS or FCS-ID staff to complete

Date:	
Purpose of trip:	
Appointment time:	

⁴ A special patient for whom a needs assessment under Part 3 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 as required by s23(5) or s35(4) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 comes under the care of FCS-ID.

Departure location:	
Destination:	
Return time (Estimated duration of court or appointment):	
Return location:	
Rest breaks (Times and secure locations if applicable):	

Patient background – RFMHS or FCS-ID staff to complete

Describe current risk to self: (Context in consultation with the responsible clinician) High Medium Low	
Describe current risk to others: (Context in consultation with the responsible clinician) High Medium Low	
List highest and most likely risk scenarios of escape: (Context in consultation with the responsible clinician)	
List highest and most likely risk scenarios of violence: (Context in consultation with the responsible clinician)	
Medical conditions and medication relevant to trip: (In lay terms)	
Cultural safety considerations to be aware of, including requirement for appropriate cultural staff escorts:	
Alternatives to transportation considered, such as postponement, audio-visual link technology investigated:	
Specific forensic mental health plans, such as alternative vehicle and escort arrangements, that may reduce the need for mechanical restraint:	
Other factors to be aware of during transportation, including risk mitigation approaches, specific vulnerabilities, disabilities, communication issues, and medical conditions:	

Are mechanical restraints required? (To be discussed with Ara Poutama or another agency if they are being asked to transport) Yes/No If restraints are required: <ul style="list-style-type: none"> comment on the reason this is the least restrictive option for transportation and what other options were investigated forensic mental health staff should discuss with RFMHS clinical management team, Ara Poutama or Police. 			
Consultation with Ara Poutama, other agency or Police:		Position:	
Completed by:			
Name:	Role:	Date:	Signature:

Escorting RFMHS or FCS-ID staff

Name	Job title	Role in transfer	Contact no if required
Escorting nurse may change on the day if there is a roster change			

*Escorting Ara Poutama or other agency staff

Number of staff required:	
----------------------------------	--

Name	Job title	Role in transfer	Contact no if required

*Corrections officer in charge (I/C) must have National Certificate in Offender Management (NCOM) – Level 3: Escorts.

*Ara Poutama or another agency escort vehicle

Vehicle type	Vehicle model	Number plate

Ara Poutama risk assessment

(Include in this section whether the patient is known to Ara Poutama, any relevant alerts, any safety information – if the patient is unknown, then the starting point for decision -making about transport should be at the high- security level as a guide.)

Ara Poutama or other escorting agency and RFMHS/FCS-ID to complete in consultation*

*For Ara Poutama involvement, this consultation should be with the prison director or their delegate within the prison.

Required actions if a change in circumstances or incident arises

Scenario	Actions required (these actions are a guide only and cannot mitigate all possible eventualities)	
	RFMHS/FCS-ID	Ara Poutama ⁵ or other escorting agency staff
Escape	ESCORTING STAFF Inform unit and call police.	
Attempted self-harm	ESCORTING STAFF Attempt to de-escalate and inform unit. Request assistance from Ara Poutama or other escorting agency staff.	
Actual self-harm	ESCORTING STAFF Provide first aid if warranted. Inform unit. Assessment and follow up / transfer to hospital if indicated. Request assistance from Ara Poutama or other escorting agency staff.	
Attempted harm to others	ESCORTING STAFF Attempt to de-escalate and immediately call Police. If in court, contact court security. Inform unit. Request assistance from Ara Poutama or other escorting agency staff.	

⁵ This section must set out the following matters by Ara Poutama for any transport.

- State the type of restraint and any other use of force that is authorised.
- State any additional type of restraint or use of force that is authorised in the event of escalation of risk to any person during transport.

Actual harm to others	ESCORTING STAFF Immediately contact Police and seek assistance from court security/Ara Poutama or other escorting agency staff.	
Public disorder	ESCORTING STAFF As above.	
Delay at destination	ESCORTING STAFF Advise court liaison if applicable. Advise unit of unexpected delay.	
Behaviour such as spitting or exposing others to their bodily fluids	ESCORTING STAFF Attempt to de-escalate and seek assistance from court security/Ara Poutama or other escorting agency staff.	
Refusing a reasonable request by RFMHS staff	ESCORTING STAFF Attempt to de-escalate and gain cooperation to request. Request assistance from Ara Poutama or other escorting agency staff.	
Other delay (eg, traffic)	ESCORTING STAFF Advise court liaison if applicable. Advise unit of unexpected delay.	
Other scenario (this should be based on any specific risks patient presents).	ESCORTING STAFF Respond and request assistance from Ara Poutama or other escorting agency staff.	

Police involvement

Police involvement required.

If yes, provide details of police involvement here:

Trip plan approval

Regional Forensic Mental Health Service/Forensic Coordination Service – Intellectual Disability

Name:	Role: Director of Area Mental Health Services/Care Coordinator	Yes/No
Signature:		Date:

Ara Poutama		
Name:	Role: Prison Director, Regional Commissioner or their delegate	Yes/No
Signature:		Date:

If Police involvement required		
Name:	Role: District Commander	Yes/No
Signature:		Date:

Ministry of Health		
Name:	Role: Director of Mental Health and Addiction	Yes/No
Signature:		Date:

Appendix 2: Legislation overview

Mental Health (Compulsory Assessment and Treatment) Act 1992

The Mental Health (Compulsory Assessment and Treatment) Act 1992 (Mental Health Act) provides a legal framework and sets out the narrow circumstances in which people may be subject to compulsory (psychiatric) assessment and treatment. It should be thought of as part of a wider model of care involving services for people experiencing a mental disorder (as defined by the Mental Health Act) who are unwilling or unable to consent to voluntary treatment in situations where these people may cause serious harm to themselves or others and are gravely impaired in caring for themselves.

Compulsory treatment under the Mental Health Act aims to provide an opportunity for a person experiencing a serious mental disorder to receive treatment to enable them to live well in the community and regain self-determination for their health care.

The Mental Health Act promotes the principle of least restrictive intervention through its focus on: regular consultation between clinicians and patients, their family/whānau, legal guardians, principal caregivers or significant support network; good clinical practice; and an approach that favours community treatment over inpatient care, where possible.

Criminal Procedure (Mentally Impaired Persons) Act 2003

The Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPMIP Act) provides the procedure for determining whether a defendant is unfit to stand trial or whether a court should acquit the person on account of insanity on the basis of an 'agreed verdict'. It also provides a process for reaching an outcome in cases where a defendant is found unfit to stand trial or acquitted on account of insanity. This is called disposition. The entire process is usually lengthy.

Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

The Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 provides a system for the compulsory care and rehabilitation of people who have an intellectual disability and have been charged with, or convicted of, an offence. There are two ways in which a person of that description can become subject to the Act. These are:

- by an order made in the course of a criminal proceeding brought against the person
- by changing the regime applicable to the person from that under the Corrections Act 2004 or the Mental Health Act to the regime under this Act. Such a change generally requires an order of the Family Court.

People who are subject to this Act are known as care recipients. Care recipients who are special care recipients (as in, they are technically in custody) must receive secure care, while other care recipients may be eligible for supervised care, that is, care that may be given in a place other than a secure facility.

Glossary

Force includes every touch of a person for the purposes of compelling or restricting movement or administering treatment, with 'minimal force' meaning light or non-painful touching to guide or help a person.

Patient means a person who:

- (a) is required to undergo assessment under section 11 or section 13 of the Mental Health Act; or
- (b) is subject to a compulsory treatment order made under Part 2 of the Mental Health Act; or
- (c) is a special patient. [Section 2, Mental Health (Compulsory Assessment and Treatment) Act 1992]

Prison has the same meaning as in section 3(1) of the Corrections Act 2004; and in section 45 of the Mental Health Act includes a hospital or a Police station, while it is deemed by section 36 of the Corrections Act 2004 to be a prison.

[Section 2, Mental Health (Compulsory Assessment and Treatment) Act 1992]

Restraint means the use of any intervention by a service provider that limits a person's normal freedom of movement. Where restraint is consented to by a third party, it is always restraint.

[Section 6 Here taratahi (Restraint and seclusion), Ngā Paerewa Health and Disability Services Standard NZS 8134:2021 (Ministry of Health and Standards New Zealand 2021)]

Special patient means:

- (a) a person who is liable to be detained in a hospital under an order made under:
 - (i) section 24(2)(a) or section 38(2)(c) or section 44(1) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
 - (ii) section 184T(3) of the Summary Proceedings Act 1957; or
- (b) a person who is remanded to a hospital under section 23 or section 35 of the Criminal Procedure (Mentally Impaired Persons) Act 2003; or
- (c) a person who is liable to be detained in a hospital under section 34(1)(a)(i) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, and who has not ceased, under section 48 of this Act, to be a special patient; or
- (d) a person who is liable to be detained in a hospital, either following an application under section 45(2) or arrangements made under section 46, and who has not ceased, under section 48, to be a special patient; or
- (e) a person who is liable to be detained in a hospital under section 191(2)(a) of the Armed Forces Discipline Act 1971; or
- (f) a person who, in accordance with section 136(5)(a) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, must be held as a special patient.

[Section 2, Mental Health (Compulsory Assessment and Treatment) Act 1992]

References and bibliography

Department of Corrections. 2017. *Custodial Practice Manual (CPM)*. Wellington: Department of Corrections. URL: corrections.govt.nz/resources/policy_and_legislation/custodial-practice-manual-cpm (accessed 13 October 2022).

Ministry of Health. 2020a. *Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992*. Wellington: Ministry of Health. URL: health.govt.nz/system/files/documents/publications/guidelines-mental-health-compulsory-assessment-treatment-act-1992-jan2021.pdf (accessed 13 October 2022).

Ministry of Health. 2020b. *Human Rights and the Mental Health (Compulsory Assessment and Treatment) Act 1992*. Wellington: Ministry of Health. URL: health.govt.nz/system/files/documents/publications/human-rights-mental-health-compulsory-assessment-treatment-act-1992-28august2020v2.pdf (accessed 13 October 2022).

Ministry of Health. 2022. *Special Patients and Restricted Patients: Guidelines for Regional Forensic Mental Health Services*. Wellington: Ministry of Health. URL: health.govt.nz/system/files/documents/publications/special-patients-restricted-patients-guidelines-oct17.pdf (accessed 13 October 2022).

Ministry of Health, Standards New Zealand. 2021. *Ngā Paerewa Health and Disability Services Standard NZS 8134:2021*. Wellington: Standards New Zealand. URL: standards.govt.nz/product-download/download/480008/0?mediaTypeId=32adf6b6-61d8-eb11-bacb-0022481007aa&formatId=1bd170ba-2514-eb11-a812-000d3a6aa268 (accessed 13 October 2022).