

Victims' Rights Act 2002 Guidelines 2018

For Directors of Area Mental Health Services,
compulsory care coordinators and health victim
coordinators

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Part 1: Introduction

Victims' Rights Act 2002

The Victims' Rights Act 2002 (the VRA) replaced the Victims of Offences Act 1987. It came into force on 18 December 2002, with the aim of strengthening the rights of victims, including by allowing victims of certain offences to receive notifications about the person accused or the offender.

The Ministry of Justice administers the VRA, and several agencies, including the Ministry of Health, have delegated responsibilities for it. The VRA gives specified agencies clear obligations to provide information and offer help to victims of offences. It turns what were a number of directives about how to treat victims into enforceable rights.

Amendments to the VRA came into force in December 2014, which changed the regime for passing victim information between government departments, as well as the occasions when victims of people in health care facilities will receive notifications. In addition, the Victims Code of Rights (the Code) was introduced in 2015. These guidelines address the changes resulting from the amendments and the Code.

Information about individuals is subject to the Privacy Act 1993 and specifically, in the case of people receiving care for their mental health or intellectual disability, the Health Information Privacy Code 1994. Agencies may only disclose health information in limited circumstances. The VRA provides a legislative framework for the release of information about certain events to registered victims.

Purpose of these guidelines

These guidelines are issued by the Director-General of Health to guide Directors of Area Mental Health Services (DAMHS), compulsory care coordinators (CCs) and health victim coordinators (HVCs) in performing their delegated responsibilities under the VRA. DAMHS, HVCs and CCs must comply with these guidelines when exercising authority delegated from the Director-General of Health under the Victims' Rights Act 2002.

These guidelines replace the Ministry of Health's *Victim Notification Guidelines for Directors of Area Mental Health Services and DHB Victim Notification Co-ordinators*, published in November 2007.

Context

These guidelines should be read in the context of the following legislation:

- Victims' Rights Act 2002
- Mental Health (Compulsory Assessment and Treatment) Act 1992
- Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003
- Criminal Procedure (Mentally Impaired Persons) Act 2003
- Privacy Act 1993 and the Health Information Privacy Code.

These guidelines aim to complement the following guidelines:

- Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992
- Special Patients and Restricted Patients: Guidelines for Regional Forensic Mental Health Services
- A Guide to the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

To access any of the above guidelines, visit the Ministry of Health's website (www.health.govt.nz). For more information about the VRA, visit the Ministry of Justice's Victims Information website (www.victiminfo.govt.nz).

Defining a victim

Under the VRA, a victim can be anyone who has:

- had an offence committed against them, or
- suffered physical injury because of an offence someone committed, or
- had property lost or damaged because of an offence someone committed.

A victim can also be:

- a parent or legal guardian of a victim who is a child or young person, as long as the parent or legal guardian has not been charged with the offence, or
- the immediate family member of someone who dies or is incapable because of a crime someone committed.

The principles of treatment and access to services (sections 7 and 8 of the VRA) apply to:

- a person who suffers any form of emotional harm because of an offence someone committed
- a parent or legal guardian of a victim who is a child or young person who suffers any form of emotional harm as a result of an offence, as long as the parent or legal guardian has not been charged with that offence
- a person who has experienced domestic violence
- a child or young person who is living with a person who has experienced domestic violence.

For definitions of other important terms used in these guidelines, see Appendix 1.

Principles and responsibilities

Part 2 of the VRA sets out principles relating to the treatment and rights of victims. Specifically, all people dealing with victims of offences under the VRA:

- must treat victims with courtesy, compassion and respect for their dignity and privacy
- should deliver services to victims that promote victims' wellbeing and rights; work to alleviate victims' suffering, whether psychological, physical or financial, and/or to help victims to participate in the rehabilitative process
- should ideally be aware of welfare, health, counselling, medical and legal services available to victims and be able to direct victims to appropriate services when necessary
- are responsible for ensuring that information about victims remains confidential and information given to victims is limited either to that prescribed under the VRA or to generic information.

The Victims Code

In 2015, the Ministry of Justice introduced a Victims Code of Rights, which sets out how victims of crime can expect government agencies and organisations, including health organisations, to treat them. The Code does not create new rights but rather reinforces the legislative requirements and principles of the VRA. It also strengthens accountability by formalising a complaints procedure for people who feel their rights have not been upheld.

The Code applies to all victims' service providers, not just those the Ministry of Justice funds. It makes the criminal justice system easier for victims to understand by clearly explaining what they can expect from the services provided at each stage of the criminal justice process.

The Code has three parts.

- Part 1 describes eight general principles to guide all service providers for victims on how they should treat victims and their family and whānau when they have been affected by a crime. These principles apply to all victims.
- Part 2 brings together 11 rights that victims have under the VRA and the duties and obligations of government agencies with criminal and youth justice responsibilities. These rights apply only to victims of a crime that has been reported to the Police or is before the courts. Not all rights apply to all victims.
- Part 3 explains how victims can make a complaint if they consider a government agency has not met its obligations.

To access the full Victims Code, visit www.victiminfo.govt.nz

Victim notification system

The VRA establishes a victim notification system¹ for victims of a 'specified offence'. A specified offence is an offence:

- of a sexual nature defined in Part 7 of the Crimes Act 1961 (excluding offences in sections 143 and 144) or sections 216H to 216J of the Crimes Act 1961 or another serious assault not captured above
- that resulted in serious injury to a person, in the death of a person or in a person becoming incapable
- of another kind that has led to the victim having reasonable grounds, for their own physical safety or security, or for the safety or security of one or more members of their immediate family.

Under this system, victims of a specified offence can register to receive notifications about the person who committed, or who is accused of committing, the offence. Police determines whether an offence is a 'specified offence', and victims must apply to the Police if they wish to register to receive notifications. A victim may apply to the Police to receive notifications at any time until the offender's sentence ends.

If a person meets the criteria to be registered as a victim, the Police must pass on that person's details to the relevant agency. The relevant agency is the:

- Department of Corrections if the person who committed the offence, or who is accused of committing the offence, is imprisoned, on parole or on home detention
- Ministry of Health if that person is detained in a hospital or secure facility.

Different agencies have different responsibilities under the VRA. These responsibilities include: ensuring that eligible victims receive notifications as required; receiving and recording any changes to the victims' contact details; and forwarding victims' details or change in contact details as required.

¹ Sections 30–48.

Part 2: Health's responsibilities

Health notification delegations

The Director-General of Health is responsible for health victim notifications under Part 3 of the VRA. The Director-General of Health has delegated health victim notification powers to Directors of Area Mental Health Services (DAMHS). The Director-General may also delegate health victim notification powers to compulsory care coordinators (CCs) in relation to people receiving court-ordered care, under section 52 of the VRA.

DAMHS and CCs are responsible for appointing health victim coordinators (HVCs) and ensuring a victim notification procedure is in place and correctly followed. DAMHS, CCs and HVCs should consider nominating a person to carry out the tasks of the HVC at times when the HVC is unable to do so. The person nominated will need to be able to access relevant information.

Under section 40 of the VRA, a victim may appoint a representative to receive VRA notifications on their behalf. They must make this appointment in writing and include the representative's consent to the appointment and a timeframe (if any) for the appointment.

People about whom health notifications may be made

The following categories of people are subject to notifications under section 37 the VRA (where there is a registered victim):

- special patients as defined in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992
- special care recipients as defined in section 6(2) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003
- people subject to an order made under sections 25(1)(a), 25(1)(b) or 34(1)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003.

Health actions in the victim notification system

In health, eligible victims will receive reasonable prior notice when the person subject to VRA notifications is:

- granted a first period of unescorted leave of absence from the hospital or facility under a leave provision²
- granted a first period of unescorted overnight leave from the hospital or facility under a leave provision
- due to be discharged from a hospital or facility.

An eligible victim will also be told as soon as it is practicable if the person subject to VRA notifications:

- dies
- escapes
- comes to the end of their sentence (in some cases).

The sections that follow give further detail of each of these notifications that are the responsibility of health. Figure 1 then presents a flowchart with an overview of these notification actions.

Section 37 notifications

Notice of first unescorted leave of absence from the hospital under a leave provision

Under section 37(2)(b) of the VRA, a victim should receive reasonable prior notice of a person's first unescorted leave from the hospital or facility under a leave provision.³ This will usually be a period of unescorted community leave granted under section 31 or 52 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or section 65 or 67 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act. A victim should be notified only of the first period of unescorted community leave under 37(2)(b), not later such periods, regardless of what section of the Mental Health Act each period of leave was granted under.

² Leave provision means any of the following provisions:

(a) section 31, 50 or 52 of the Mental Health (Compulsory Assessment and Treatment) Act 1992

(b) section 65, 66 or 67 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

³ Under section 37(3) of the VRA, 'hospital' and 'facility' include the land on which the hospital or facility is situated.

Notice of the first unescorted overnight leave from hospital under a leave provision

Under section 37(2)(ba) of the VRA, a victim should receive reasonable prior notice of a person's first unescorted overnight leave under section 31 or 52 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or section 65 or 67 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act. A victim should be notified of only the first period of unescorted overnight community leave under 37(2)(ba).

Notice of impending discharge

Under section 37(2)(a) of the VRA, a victim should receive reasonable prior notice that a person is about to be discharged or have a change in legal status.⁴ In practice, giving 'reasonable prior notice' means using good judgement or being fair and practical about giving notice before the event occurs.

Notice of escape

Under section 37(2)(c) of the VRA, a victim must be notified as soon as it is practicable if a person escapes from the hospital grounds or facility or is absent without approved leave.

If a victim has a nominated representative and the person giving the notice reasonably believes that there is a risk to the victim's safety that cannot be sufficiently managed by giving the notice to the nominated representative, they may give the notice to the victim directly (section 41(2) of the VRA). Police has advised that if the risk to the victim is imminent, then Police should be notified of the escape by calling 111.

A victim should be advised as soon as it is practicable when the person is detained again after escaping from the hospital grounds or facility or being absent without approved leave. In most cases, it would be appropriate to make 37(2)(c) notifications by telephone or text message.

Notice of death

Under section 37(2)(d) of the VRA, a victim should be informed as soon as it is practicable if the person subject to notifications dies, no matter whether the death occurred within or outside a facility. It is not appropriate to divulge any information about the circumstances of the person's death.

⁴ Appendix 4 outlines examples of discharges that should be notified to victims.

Section 38 victim notification requirements

Under section 38, a victim should be informed, as soon as it is practicable, if the person is no longer liable to detention for the sentence imposed for the offence. The victim should be informed that they will not receive any more notifications from health in relation to that person or offence.⁵

Section 38 applies only to certain people who have been subject to the notifications referred to in section 37, when they cease to be special patients under section 48 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or special care recipients under section 69 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003. These certain people are people whose liability to be detained in connection with the offence comes under one of the following orders or provisions:

- following an application under section 45(2) or an arrangement under section 46 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 where they are transferred from prison to hospital
- following an application under section 29(1) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 where they are transferred from prison to a secure facility
- in accordance with an order under section 34(1)(a) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 when a person is subject to detention in prison and either a mental health service or secure facility.

Closing notifications

The three occasions when health services should close notifications are when the person subject to notifications:

- is no longer liable to be detained in connection with the offence
- is discharged⁶
- dies.

If a person subject to notifications is transferred back to prison under section 47 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or section 71 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, the DAMHS, CCs or HVCs should forward any victim details to the Department of Corrections (section 33(4)). DAMHS or HVCs must also give victims reasonable prior notice of the transfer.

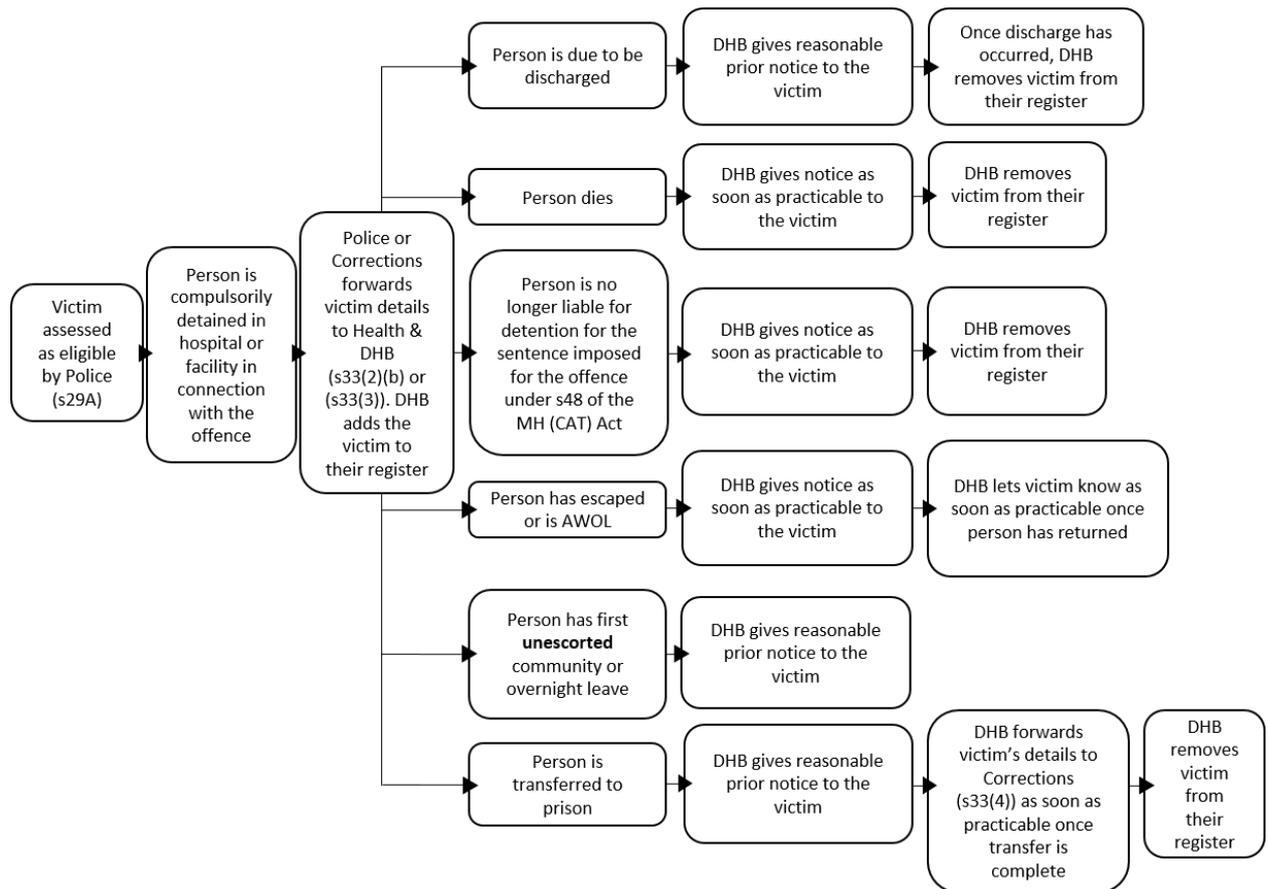
⁵ Victims may be eligible for notifications from other agencies (eg, under section 36 of the VRA if the person subject to notifications breaches parole conditions).

⁶ Appendix 4 gives examples of notifiable discharges.

In any situation where the victim is no longer eligible to receive notifications, the DAMHS or HVCs must ensure the details of the victim are immediately removed from their list of registered victims.

It is important to note that some victims who are no longer eligible for health notifications may still be eligible for notifications from other agencies (eg, under section 36 of the VRA if the person subject to notifications breaches parole conditions). Where a person subject to victim notifications could also become subject to parole conditions, HVCs and clinicians should liaise with the Department of Corrections about the potential impact of parole conditions.

Figure 1: Overview of health notification actions



Note: AWOL = absent without approved leave; DHB = district health board; MH (CAT) Act = Mental Health (Compulsory Assessment and Treatment) Act 1992; Health = Ministry of Health; Person = person subject to notifications under the VRA; VRA = Victims' Rights Act 2002. Section numbers relate to sections in the VRA.

Making health victim notifications

- Section 46 of the VRA states that notifications may be made by one or more of telephone, post, fax or email. However, it also states that nothing prevents someone from giving notice by any other means. Other means include but are not limited to text

message and notification in person with family, whānau or other support such as a kaumātua present. HVCs should use their discretion in deciding which method or methods are most appropriate in each instance, considering the preferences of the victim. They should inform the Ministry of Health if they cannot contact the victim or representative.

- Confidentiality of information should be considered when making notifications. All posted notifications should be addressed to the victim, using a plain envelope with a post office box return address.
- If the victim has nominated a representative, all notifications should be sent to the representative rather than the victim. The only exception is for escape and absence without approved leave notifications, where the person giving the notice can notify the victim directly if they reasonably believe the victim's safety is at risk in a way that cannot be reduced by notifying the nominated representative.
- Every time the person subject to notifications escapes, or if they die or their sentence ends, notice must be given as soon as it is practicable. In practice, this means giving notice as soon as you are able to without it causing any unreasonable demands.
- All other notifications require reasonable prior notice. In practice, giving 'reasonable prior notice' means using good judgement or being fair and practical about giving notice before the event occurs. The Ministry considers that, in general, where the event is planned, notifications should be given 10 days in advance of that planned event.
- Some notifications may alarm victims. DAMHS, CCs or HVCs should provide victims with information on how to access relevant information and support. For resources that can help with this task, visit the Victims Information website (www.victiminfo.govt.nz).
- Information given to victims should be limited to that prescribed under the VRA, unless the person subject to notifications has given consent to the disclosure of additional information.
- Details about the person's accommodation, leave conditions or care are not appropriate to include in notifications, unless the person subject to notifications has given consent to include these details.
- Health VRA notification requirements no longer apply once a victim is notified of a person's discharge or change of legal status. For examples of notifiable discharges, see Appendix 4.

Ensuring notifications reach victims

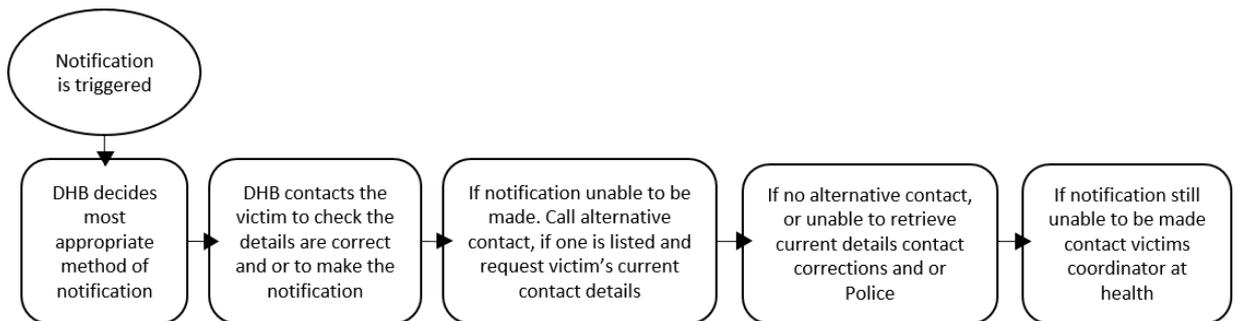
Health victim coordinators must make all reasonable efforts to ensure notifications reach victims.

- If appropriate, HVCs should contact the victim to confirm the victim's details are correct before they send notifications.
- If posting notifications, HVCs should send letters by registered post, requiring a signature to confirm delivery.
- If emailing notifications, HVCs should select the 'read receipt' tracking option to confirm the notification has reached the victim.

- If they cannot contact the victim, HVCs should check if an alternative contact is listed. If an alternative contact is listed, contact this person directly to ask for an update of contact details for the victim.
- If there are no alternative contact details or HVCs are still unable to contact the victim contact Police and Corrections to ask if they have any updated contact details for the victim.
- If they still cannot make the notification, the HVC should contact the victim's coordinator in the Ministry of Health for further advice.

Figure 2 presents a flowchart of the actions required to ensure notifications reach victims.

Figure 2: Ensuring health notifications reach victims



Note: DHB = district health board; Health = Ministry of Health.

Providing general information to victims

- DAMHS, CCs or HVCs must provide a victim or another affected person with information about any programmes, remedies or services available to them through the district health board (section 11 VRA).
- DAMHS, CCs or HVCs should notify victims of their right to withdraw their request to receive notifications. A victim should make any such request in writing, this includes email. Victims must be informed when their request has been actioned (section 33B VRA).
- DAMHS, CCs or HVCs should notify victims that victims can contact the service in writing if their victim notification contact details change in any way.
- DAMHS, CCs or HVCs should consider providing victims with generic information about care pathways. For information to help with this action, visit the Ministry of Health's Victims' Rights webpage (www.health.govt.nz/victimrights).

Informing people subject to notifications about the notification requirements

- DAMHS should consider providing generic information about the VRA to all people who could become subject to notification requirements.
- At the discretion of a responsible clinician and clinical team (or care-manager in the case of care recipients), an offender may be told that they are subject to the victim notification requirements of the VRA. Information may include details about when notifications may occur and when notifications will cease.
- The responsible clinician, care manager and clinical team must ensure that the victim's confidentiality is maintained.

Confidentiality

- A victim's confidentiality must be maintained at all times, especially in respect of the person subject to notifications under the VRA.
- The confidentiality of the person who is subject to notifications under the VRA must always be maintained, unless the exceptions in the notification provisions of the VRA apply.
- The parties to whom confidentiality applies may waive that confidentiality.
- Where those parties have waived confidentiality, opportunities for contact between a victim and a person subject to notifications should as far as possible enhance the recovery of both of them.
- DAMHS, CCs and HVCs must establish and maintain systems that prevent any other unauthorised person from accessing information about victims.
- DAMHS, CCs or HVCs should consider the Privacy Act 1993 and the Health Information Privacy Code when making decisions regarding disclosing information about a person receiving care in a health setting.

Maintaining accurate victim information

- DAMHS are responsible for ensuring the service maintains an accurate and current register of health victim notifications.
- The register should record dates and details of any information received from or about the victim and the dates of any notifications or actions taken. This includes new victim

information, details about change of address, withdrawal of request to receive notifications and transfer of custody to Police or the Department of Corrections.

- The register should also record information about notifications made to victims or their representatives. This includes the reason for notification, date of the event for which the notification is required (eg, date of discharge, end of sentence, absence without approved leave, death, first unescorted community or overnight leave), date the notification was made and method of notification (eg, email, phone call, letter, text message).
- If the victim has nominated a representative, the register should contain the name and address (and any additional contact information) and link the victim's representative to the person subject to notifications in the service.

Change of address of victim or victim's representative

Section 33A of the VRA states that a victim, or the victim's representative, may change the address (and contact details) provided for notifications by notifying in writing each of the following parties (or their representatives) from whom they would likely be given notice:

- Commissioner of Police
- Chief Executive of the Department of Corrections
- Director-General of Health.

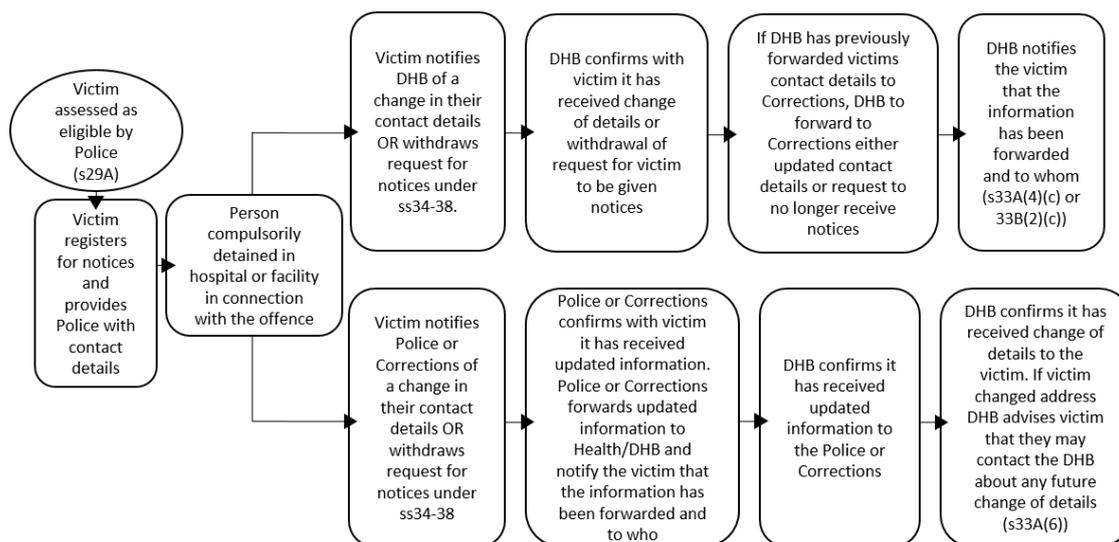
After receiving such a notification, the party must confirm it has received the notification to the victim or to the victim's representative. It must also forward the change in details to the agency with current responsibility for that victim or victim's representative.

The receiving agency must then also confirm that it has received the notification to the victim or to the victim's representative and to the party forwarding the change of details. It should also inform the victim that they should notify it of any future changes in address.

As the Director-General of Health is able to delegate this duty, it will help victims if HVCs advise them that they can contact HVCs to change their contact details.

Figure 3 presents a flowchart of the obligations involved in receiving and forwarding information about a change in contact address.

Figure 3: Overview of obligations in relation to receiving and forwarding information about a change in contact address of the victim or victim’s representative



Note: DHB = district health board; Health = Ministry of Health. Section numbers relate to sections in the VRA.

Access to resources to assist victims

- The Ministry of Health’s Victims’ Rights webpage (www.health.govt.nz/victimrights) contains links to information and resources that can support victims. One of these links is to the Victims Information website (www.victiminfo.govt.nz), which has information to help victims understand the criminal justice system and lists of support services that government and other agencies offer victims.
- The Victims Information Line (0800 650 654) provides information about the options and support services that are available.
- The Victims Centre, within the Ministry of Justice, provides victims with information about victims’ rights, entitlements and the criminal justice process. The Victims Centre also provides a number of resources for organisations. Victims can email victimscentre@justice.govt.nz for more information about services available to them.

Complaints

A transparent complaint process is key to making agencies more accountable for the way they provide services to victims of crime. A victim may make a complaint if they feel that any right under any of sections 11–21, 28–48 and 51 of the VRA has not been upheld.

Government agencies that work closely with victims are required to respond promptly and fairly to all complaints about rights.

HVCs must keep records of all complaints made under the VRA and provide a report of all complaints to the Ministry of Health. Feedback or complaints relating to victims of people

receiving treatment in mental health services can be made to the Director of Mental Health by:

- writing to:
Office of the Director of Mental Health and Addiction Services
Ministry of Health
PO Box 5013
Wellington 6145
- emailing: **mentalhealthadmin@moh.govt.nz**

Any reporting, feedback or complaints relating to victims receiving care in intellectual disability services can be made to the Chief Advisor, Intellectual Disability (Compulsory Care and Rehabilitation) by:

- writing to:
Chief Advisor, Intellectual Disability (Compulsory Care and Rehabilitation)
Ministry of Health
PO Box 5013
Wellington 6145
- emailing: **info@health.govt.nz**

Appendix 1: Glossary

Accused or **person accused of the offence** or **offender**, in relation to a victim, means a person charged (as a principal or party or accessory after the fact or in any other way) with committing the offence that affected the victim.

As soon as it is practicable in relation to giving notices, in practice means giving notice as soon as you are able to without it causing any unreasonable demands.

Compulsory care coordinator (CC) means a person appointed under **section 140** (of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003); and, in relation to a function, duty, or power, means the person appointed under that section who is responsible for the geographical area in which the function is to be performed, or the duty or power is to be exercised. As defined in section 5(1) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

Directors of Area Mental Health Services (DAMHS) are responsible for administering the Victims' Rights Act 2002 (VRA) within their DHB. See also 'health victim coordinators' below.

Escape or absent without approved leave (AWOL) refers to any instance where a person subject to notifications is absent without permission. This could include absence from the ward, hospital, facility or becoming absent whilst on leave.

Facility is a place that is used for the purpose of providing care to persons who have an intellectual disability (whether or not the place is also used for other purposes).

Generic information is non-specific information about the treatment pathways that patients of a particular type may follow. It does not divulge specific information about a particular patient.

Health victim coordinators (HVCs) are responsible for administering the victim notification system on behalf of the DAMHS and for carrying out the notifications specified in the VRA. The HVC ensures that all notifications comply with the VRA, while the DAMHS authorise VRA notifications.

Hospital means premises that are used to provide hospital mental health care in accordance with **section 9** of the Health and Disability Services (Safety) Act 2001; or are not yet used, but are intended to be used, to provide hospital mental health care, and are occupied by a person certified under that Act to provide hospital mental health care; but where only parts of any premises are used (or intended to be used) to provide hospital mental health care, means only those parts; and at a time before 1 October 2004, includes premises licensed or deemed to be licensed as a psychiatric hospital pursuant to Part 5 of the Hospitals Act 1957. As defined in **section 2** of the Mental Health (Compulsory Assessment and Treatment) Act 1992. *For notifications of unescorted leave under section 37(2)(b), hospital includes the land on which the hospital is situated.*

Reasonable prior notice in relation to giving notices in practice means using good judgement or being fair and practical about giving notice before the event occurs.

Secure facility is a facility (defined above) that has particular features that are designed to prevent persons required to stay in the facility from leaving the facility without authority and is operated in accordance with systems that are designed to achieve that purpose. As defined in **section 9(2)** of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003. *For notifications of unescorted leave under section 37(2)(b), facility includes the land on which the facility is situated.*

Specified offence is an offence of a sexual nature defined in Part 7 of the Crimes Act 1961 (excluding offences in sections 143 and 144) or sections 216H to 216J of the Crimes Act 1961 or another serious assault not captured above that resulted in serious injury to a person, in the death of a person or in a person becoming incapable or of another kind that has led to the victim having reasonable grounds, for their own physical safety or security, or for the safety or security of one or more members of their immediate family, as defined in **section 4** of the Victims' Rights Act 2002 (VRA).

Unescorted leave from the hospital or facility means leave from the hospital or facility grounds as defined by the district health board responsible for that hospital or facility.

Victim can be anyone who has had an offence committed against them, or suffered physical injury because of an offence someone committed, or had property lost or damaged because of an offence someone committed. A victim can also be a parent or legal guardian of a victim who is a child or young person, as long as the parent or legal guardian has not been charged with the offence, or the immediate family members of someone who dies or is incapable because of a crime someone committed, as defined in **section 4** of the Victims' Rights Act 2002 (VRA).

Victim of a specified offence victim of an offence that the New Zealand Police has determined is a specified offence (defined above).

Appendix 2: Relevant legislation

Victims' Rights Act 2002

Section 33: Address of victim or victim's representative to be forwarded in certain cases

Section 33A: Notification of change of address of victim or representative

Section 33B: Notification of withdrawal of request to be given notice

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

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

Mental Health (Compulsory Assessment and Treatment) Act 1992

Section 31: Leave for inpatients

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

Section 46: Detained persons in need of care and treatment

Section 48: Relationship between detention in hospital and sentence

Section 50: Leave of special patients

Section 52: Director may grant short-term leave

Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

Section 5(1): [Compulsory care] co-ordinator

Section 6: Meaning of care recipient and related terms

Section 9: Meaning of facility and secure facility

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

Section 45: Jurisdiction to make compulsory care order

Section 65: Care manager may grant leave

Section 66: Minister may authorise leave for special care recipients

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

Section 69: Relationship between detention in secure facility and sentence

Criminal Procedure (Mentally Impaired Persons) Act 2003

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

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

Appendix 3: Summary of legislation and health obligations

<p>Forwarding address under s33 of the VRA</p>	<p>Health action</p>
<p>If a victim or the victim's representative has made a request under section 32B(1)(b) and complied with section 32B(1)(c), Police must forward the following information to the relevant agency: (a) the victim's name and address; (b) the victim's name and the name and address of the victim's representative.</p>	<p>Health must then forward to Corrections the information that Health has received under subsection (1) if the person accused of the offence or, as the case requires, the offender, having been liable to be detained in a hospital or facility in connection with the offence, is removed to a prison under section 47(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or section 71 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003</p>
<p>Health notifications under s37 of the VRA</p>	<p>Health action</p>
<p>This section applies to a victim only if the person accused of the offence or, as the case requires, the offender, is liable to be detained in a hospital or facility in connection with the offence and, when their liability of that kind began, they were liable to be detained in a hospital or facility as a special patient as defined in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or as a special care recipient as defined in section 6(2) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 or under an order made under section 25(1)(a) or (b) or section 34(1)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003.</p>	<p>HVCs must give a victim to whom this section applies—</p> <ul style="list-style-type: none"> (a) reasonable prior notice of an impending discharge of the person or offender; and (b) reasonable prior notice of the first unescorted leave of absence from the hospital or facility granted to the person or offender under a leave provision; and (ba) reasonable prior notice of the first unescorted overnight leave of absence granted to the person or offender under a leave provision; and (c) notice, as soon as it is practicable, of every escape by the person or offender; and (d) notice, as soon as it is practicable, of the death (whether within or outside a hospital or facility) of the person or offender.
<p>Health notifications under s38 of the VRA</p>	<p>Health action</p>
<p>This section applies if a person referred to in s37: (a) was, when their liability to detention in a hospital or facility began, liable to be detained following an application under section 45(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992, or under an arrangement under section 46 of that Act; or following an application under section 29(1) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or under an order under section 34(1)(a) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; and (b) ceases, under section 48 of the Mental Health (Compulsory Assessment and Treatment) Act 1992, to be a special patient within the meaning of that Act or ceases, under section 69 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, to be a special care recipient within the meaning of that Act.</p>	<p>HVCs must, instead of complying with section 37(2), give the victim notice, as soon as it is practicable, that the offender is no longer liable to detention for the sentence imposed for the offence.</p>
<p>Delegations under the VRA</p>	<p>Health action</p>
<p>The Director-General of Health may delegate any of their duties under sections 33(3) and 37–39 to any person who: (a) holds the office of Director or Deputy Director of Mental Health, in accordance with section 91 of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or (b) is a Director of Area Mental Health Services appointed under section 92 of that Act; or (c) is a compulsory care coordinator appointed under section 140 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.</p>	<p>DAMHS have delegated responsibility to make victim notifications under sections 37 and 38 of the VRA.</p>

Note: DAHMS = Directors of Area Mental Health; HVCs = health victim coordinators; VRA = Victims' Rights Act 2002.

Appendix 4: Examples of notifiable discharges

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

- A special patient or special care recipient who is subject to section 24(2) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 is no longer unfit to stand trial and is directed by the Attorney-General to be brought before the appropriate court or to be held as a patient under section 31(2) of that Act.
- A special patient or special care recipient who is detained subject to section 24(2) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, although still unfit to stand trial, is directed by the Minister of Health to be held as a patient or as a care recipient if, in the Minister's opinion, detention as a special patient is no longer necessary (under section 31(3) of that Act).
- The maximum period for detention has expired for a special patient found unfit to stand trial, and the Attorney-General directs that the person be held as a patient (section 31(4) of the Criminal Procedure (Mentally Impaired Persons) Act 2003).
- A special patient or special care recipient who is subject to section 24(2)(a) of the Criminal Procedure (Mentally Impaired Persons) Act 2003, after being acquitted on account of insanity, is directed by the Minister of Health to be held as a patient subject to a compulsory treatment order under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or to be discharged (section 33(3)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003).
- A special patient detained in hospital in connection with the offence transfers to prison under section 47(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992.
- A special patient or a special care recipient becomes no longer liable to detention for a sentence imposed. Section 48 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 and section 69 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 apply respectively to cessation of liability to detention for sentences imposed.
- A patient who is subject to court orders made under sections 25(1)(a), 25(1)(b) or 34(1)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 is no longer subject to treatment as an inpatient or care recipient.

There may be other instances where a patient's or care recipient's discharge or change of status is notifiable under the VRA to the relevant victim. When determining whether a particular discharge is subject to the provisions of the VRA, DAMHS and HVCs should consider Part 3 of the VRA and the requirements of section 38 of the VRA.

Appendix 5: Contact details

If you have any questions about these guidelines, contact:

Office of the Director of Mental Health and Addiction Services
Ministry of Health
PO Box 5013
Wellington 6145
New Zealand

Phone: (04) 496 2213

Fax: (04) 496 2559

Email: **mentalhealthadmin@moh.govt.nz**

Website: **www.health.govt.nz**