



Victims' Rights in the Health System

Guidance for
Directors of Area Mental Health Services
Compulsory care coordinators
Care managers
Victim coordinators

Citation: Ministry of Health. 2023. *Victims' Rights in the Health System: Guidance for Directors of Area Mental Health Services, compulsory care coordinators, care managers, victim coordinators*. Wellington: Ministry of Health.

Published in May 2023 by the Ministry of Health
PO Box 5013, Wellington 6140, New Zealand

ISBN 978-1-991075-23-9 (online)
HP 8767



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Part 1: Introduction

Purpose of these guidelines

The purpose of these guidelines is to guide the Director of Mental Health, Directors of Area Mental Health Services (DAMHS), compulsory care coordinators (care coordinators), care managers and victim coordinators in performing their delegated responsibilities under the:

- Victims' Rights Act 2002 (the VRA)
- Criminal Procedure (Mentally Impaired Persons) Act 2003 (the CP (MIP) Act)
- The Mental Health (Compulsory Assessment and Treatment) Act 1992
- Mental Health Act (the Mental Health Act)
- The Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 IDCCR Act (the IDCCR Act).

DAMHS, care coordinators, care managers and victim coordinators must comply with these guidelines when exercising authority delegated from the Director-General of Health under the VRA and the Director of Mental Health under the Rights for Victims of Insane Offenders Act 2021.

These guidelines replace the Ministry of Health's *Victims' Rights Act 2002 Guidelines 2018* published in November 2018.

Victims' Rights Act 2002

The Victims' Rights Act 2002 replaced the Victims of Offences Act 1987, with the aim of strengthening the rights of victims. It gave victims of certain offences additional rights to receive information and notifications about the person accused or convicted of offending against them.

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

Amendments to the VRA came into force in December 2014. They 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 was introduced in 2015.

The Privacy Act 2020 applies to all information about individuals. For people receiving care for their mental health or intellectual disability in particular, the Health

Information Privacy Code 2020 also applies. Agencies may only disclose health information in limited circumstances. The VRA provides a legislative framework for releasing information about certain events to registered victims.

Rights for Victims of Insane Offenders Act 2021

Parliament passed the Rights for Victims of Insane Offenders Act 2021 on 13 December 2021. It came into force on 14 December 2022.

The Rights for Victims of Insane Offenders Act 2021 changes the wording of the insanity verdict from 'not guilty by reason of insanity' to 'act proven but not criminally responsible on account of insanity'. It also gives victims additional rights, including the rights to:

- be informed of what has happened to the offender
- have a say on the offender's leave and release
- make a victim impact statement.

These changes should strengthen rights and protections for victims who are transferred from the criminal justice system to the health system.

The Rights for Victims of Insane Offenders Act 2021 aims to give rights to the victims of people detained in hospital by a court for mental health treatment, and victims of people detained in a secure facility for intellectual disability care, that are comparable to the rights of victims of other criminal offenders. The Rights for Victims of Insane Offenders Act 2021 amends the VRA, Mental Health Act, CP (MIP) Act and IDCCR Act. These guidelines refer frequently to these amended Acts.

The Rights for Victims of Insane Offenders Act 2021 increases the information and number of notifications that registered victims of special patients, patients, special care recipients and care recipients can receive about the person who offended against them. It also allows registered victims to make a submission before certain decisions about special patients, patients, special care recipients or care recipients are made.

Context

These guidelines should be read in the context of the:

- 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 2020 and the Health Information Privacy Code 2020.

These guidelines complement:

- *Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992*¹
- *Victims' Rights in the Health System: Your rights as a registered victim of a person detained in hospital for mental health treatment*²
- *Special Patients and Restricted Patients: Guidelines for Regional Forensic Mental Health Services*³
- *A Guide to the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003*.⁴

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

Health entities should also be familiar with the Health Quality & Safety Commission's code of expectations, *Te tikanga mō te mahi tahi a ngā hinonga hauora ki ngā kiritaki me ngā whānau: The code of expectations for health entities' engagement with consumers and whānau*. To access it, visit: www.hqsc.govt.nz/consumer-hub/engaging-consumers-and-whanau/code-of-expectations-for-health-entities-engagement-with-consumers-and-whanau.

Defining a victim

Under section 4 of 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 a person who dies or is incapable because of a crime someone committed. The Victims' Rights Act 2002 defines immediate family, in relation to a victim, as a member of the victim's family, whānau or other culturally recognised family group, who is in a close relationship with the victim at the time of the offence. Immediate family members include:
 - the victim's spouse, civil union partner or de facto partner
 - the victim's child or step-child

¹ Ministry of Health. 2022. *Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992*. Wellington: Ministry of Health.

² Ministry of Health. 2022. *Victims' Rights in the Health System: Your rights as a registered victim of a person detained in hospital for mental health treatment*. Wellington: Ministry of Health.

³ Ministry of Health. 2022. *Special Patients and Restricted Patients: Guidelines for Regional Forensic Mental Health Services*. Wellington: Ministry of Health.

⁴ Ministry of Health. 2004. *A Guide to the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003*. Wellington: Ministry of Health.

- the victim's brother or sister or step-brother or step-sister
- a parent or step-parent of the victim
- a grandparent of the victim.

The principles of treatment and access to services (sections 7 and 8 of the VRA) also 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 suffering 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 family violence
- a child or young person who is living with a person who has experienced family violence.

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 who a victim may receive health and disability notifications about

A registered victim may receive notifications about the following categories of people under the VRA:

- special patients as defined in section 2(1) of the Mental Health Act
- special care recipients as defined in section 6(2) of the IDCCR Act
- patients or care recipients subject to an order made under section 25(1)(a), 25(1)(b) or 34(1)(b) of the CP (MIP) Act.

Challenges with legal terms

These guidelines use the term 'victim' in relation to its specific legal meaning, as we have outlined in the 'Defining a victim' section. Some people may disagree with the use of the word 'victim', preferring another term such as 'survivor', 'bereaved person' or 'affected person'. We acknowledge the need for a holistic view of victims' wellbeing and the impact that an offence can have on their spiritual and emotional health and on the health of their family or whānau. Victims can also include secondary victims, such as witnesses, colleagues, family and whānau. However, these victims may not be eligible for victim notifications. Under the Victims' Rights Act 2002, 'victim' has a

specific legal meaning and it also holds specific legal rights, so we have continued to use this term throughout these guidelines to reflect this legal status.

These guidelines also use terms such as 'special patient', 'patient', 'special care recipient', 'care recipient', 'offender' and 'insane offender'. Such terms can maintain stigma and prejudice towards people experiencing mental health conditions or intellectual disability. The language can position them as only manageable through custodial care and medical treatment. This prejudice stops people from understanding that these individuals have choices and autonomy, which can lead to discrimination and harmful practices.

Preferred terms may include 'consumer', 'service user', 'tangata whai ora', 'tangata whaikaha' or 'detained person'. However, under the Mental Health Act, the IDCCR Act, the CP (MIP) Act and the Rights for Victims of Insane Offenders Act 2021, 'patient', 'special patient', 'special care recipient', 'care recipient', 'offender', and 'insane offender' have a specific legal meaning. While we do not want to contribute to stigma or prejudice towards these people, we have continued to use these terms throughout these guidelines to reflect their legal meaning.

Principles

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.

Additionally, services should:

- deliver services to victims that promote victims' wellbeing and rights; work to alleviate victims' suffering, in a holistic way that reflects Te Whare Tapa Whā, considering their psychological, physical, spiritual, social and financial needs; and/or help victims to participate in their rehabilitative process
- as part of their role, be aware of welfare, health, counselling, medical and legal services available to victims and be able to direct victims to appropriate services when necessary
- be responsible for keeping information about victims confidential and for limiting information given to victims to either the information prescribed under the VRA or generic information.

The Victims Code of Rights

In 2015, the Ministry of Justice introduced a Victims Code of Rights (Victims Code), which sets out how victims of crime can expect government agencies and organisations, including health organisations, to treat them. The Victims 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 Victims Code applies to all victims' service providers, not just those funded by the Ministry of Justice. 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 Victims Code has 3 parts.

- Part 1 describes 8 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 of these rights apply to all victims.
- Part 3 explains how victims can make a complaint if they consider a government agency has not met its legal responsibilities. See the Ministry of Justice webpage **Giving feedback or making a complaint**⁵ for more information on this process.

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

The Code of Health and Disability Services Consumers' Rights

The Code of Health and Disability Services Consumers' Rights (the Consumers' Rights Code) establishes the rights of consumers, and the obligations and duties of providers to comply with it. It is a regulation under the Health and Disability Commissioner Act 1994. Victims who require a medical service are entitled to the rights under the Consumers' Rights Code. To access it in full, visit: www.hdc.org.nz/your-rights/about-the-code/code-of-health-and-disability-services-consumers-rights.

Victim notification system

The VRA establishes a victim notification system⁶ for victims of a 'specified offence'. The 3 types of specified offence are:

- 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 in the definitions above
- an offence that resulted in a person dying or becoming seriously injured or incapable
- another kind of offence that has led the victim to have ongoing fears, on reasonable grounds, for their own safety or security, or for the safety or security of one or more members of their immediate family.

⁵ Victims should make complaints under the Victims Code rather than the Code of Health and Disability Services Consumers' Rights because in their role as victims they are not considered to be consumers of a health service.

⁶ Sections 30–48.

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. The New Zealand 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 at any time to receive notifications 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 either 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.

In practice, where the relevant agency is the Ministry of Health, the process for notification is as follows (see Figure 1 for a summary).

First, the New Zealand Police emails the Ministry of Health when it receives a request from a person to become a registered victim. It provides the offender's name, date of birth and the court they appeared in.

The Ministry of Health will then check with the closest regional forensic mental health service (usually contacting the victim coordinator of the service) as to whether the offender is under its care. The victim coordinator or the DAMHS will then use the offender's details to search for whether they are under the care of that service, and if so what their legal status is, and advise the Ministry of Health within one working day.

If the person is not under the care of the DAMHS that the Ministry of Health contacted, the victim coordinator or the DAMHS will let the Ministry of Health know which service the person's care is under. The Health Information Privacy Code 2020 authorises the DAMHS and victim coordinator of the forensic mental health service to access and disclose this information for the purposes of complying with the Victims' Rights Act 2002. The DAMHS statutory obligations override the privacy principles in the Privacy Act 2020 so they are allowed to search for the person and to carry out their delegated duty.

If the person has an eligible legal status for victim notification, the Ministry of Health will tell New Zealand Police that the person is eligible. New Zealand Police will then pass on the registered victim's details to the Ministry of Health, which will pass them on to the forensic mental health service or general mental health service for them to register and make contact with the registered victim.

If the person is not under the care of mental health services, the Ministry of Health will consider whether it needs to contact other services, such as intellectual disability services.

Figure 1: Overview of notification actions before the Ministry of Health is involved



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 each victim's contact details
- forwarding a victim's details or change in contact details as required.

The VRA, Mental Health Act, IDCCR Act and CP(MIP) Act also include responsibilities to:

- explain to victims the meaning of a special patient, patient, care recipient or special care recipient and the consequences of their legal status
- explain how victims can participate in certain decisions about the special patient, patient, care recipient or special care recipient
- when making decisions, consider any reasonable concerns that the victim may have
- notify the victim of the outcome of the decisions and any conditions associated with those decisions.

Part 2: Health and disability staff responsibilities

Health and disability notification delegations

Responsibilities under the Victims' Rights Act

The Director-General of Health is responsible for notifying victims of people or offenders subject to mental health or intellectual disability care under Part 3 of the VRA (victim notifications). The Director-General of Health has delegated health victim notification responsibilities to Directors of Area Mental Health Services. Under section 52 of the VRA, the Director-General may also delegate victim notification powers to compulsory care coordinators in relation to people receiving court-ordered care under the IDCCR Act. See Appendix 1 for a summary of these delegations.

DAMHS and care coordinators are responsible for ensuring a victim notification procedure is in place and that services are following it correctly. DAMHS are responsible for appointing victim coordinators to help with the administrative responsibilities of victim notifications.

DAMHS, care coordinators and victim coordinators should consider nominating a person to carry out the tasks of the victim coordinator at times when the victim coordinator is unable to do so. The person nominated will need to be able to access relevant information.

When a registered victim of a patient (rather than a special patient) is eligible for notifications, and the patient is under general mental health services, the DAMHS (rather than the forensic DAMHS) will be responsible for all victim notifications following the initial section 30A notification.

Responsibilities under the CP (MIP) Act

The Director of Mental Health is responsible for victim notifications for:

- special patients and special care recipients unfit to stand trial
- change of status of special patients or special care recipients for people acquitted on account of insanity under the CP (MIP) Act.

The Director of Mental Health cannot delegate these responsibilities under section 31(3) and section 33(3) of the CP(MIP) Act.

Responsibilities under the Mental Health Act

Under the Mental Health Act, the Director of Mental Health is responsible for notifications to victims of offenders in the health system for leave of absence from hospital. The Director of Mental Health has delegated victim notification powers under sections 52 and 50 of the Mental Health Act to DAMHS. However, victim notification powers under section 80 of the Mental Health Act are the responsibility of the Director of Mental Health, who cannot delegate them to DAMHS.

Responsibilities under the IDCCR Act

Under the IDCCR Act, the Director-General of Health is responsible for notifications to victims of offenders in the health system about special care recipients' leave. The Director-General has delegated health-related victim notification powers under sections 66 and 67 of the IDCCR Act to care coordinators.

In addition, care managers are responsible for notifying victims of offenders in the health system about care recipients' leave under the IDCCR Act. Care managers are responsible for victim notifications under section 65 of the IDCCR Act.

From an operational point of view, the victim coordinators administer these notifications.

Maintaining accurate information about the victim

DAMHS and care coordinators (through the victim coordinators) are responsible for ensuring the service maintains an accurate and current register of health victim notifications.

The register should record:

- dates of any notifications to the victim or their representative, including the reason for notification and the date of the event (if known) for which the notification is required
- the date of notifying the victim or their representative (including when inviting them to make a submission and notifying them of the outcome of a decision) and method of notification (eg, email, phone call, letter, text message)
- dates and details of any information received from or about the victim, including submissions on leave, a Mental Health Review Tribunal hearing or a change of status
- new victim information such as details about change of address, withdrawal of request to receive notifications and transfer of custody to Police or the Department

of Corrections. If a transfer occurs, forward the victim's information to Police or Corrections, as applicable

- if the victim has nominated a representative, the representative's name and address (and any additional contact information), along with information linking the victim's representative to the person subject to notifications in the service.

Health and disability actions in the victim notification system

Special patients

DAMHS must notify a registered victim (or their representative), as soon as it is practicable, that the person who has offended against them has been made a special patient. As part of this notification, they must explain the meaning and consequences of the person's legal status to the victim and provide a list of future notifications that the victim is eligible to receive.

Some of these future notifications inform registered victims when certain applications about the special patient are made. Future notifications may also invite the victim to make a written submission about them. Depending on the legal status of the special patient, the victim will receive a notification when an application is put forward for the decision to grant:

- leave under section 52 of the Mental Health Act (if that leave of absence would permit the special patient to exercise greater autonomy than they have had in any other leave of absence previously granted to them before)⁷
- leave under section 50A of the Mental Health Act
- a change of legal status under section 31(3) or 33(3) of the CP(MIP) Act⁸
- a Mental Health Review Tribunal hearing under section 80 of the Mental Health Act.

In addition, the DAMHS must tell a registered victim, as soon as it is practicable, if the special patient:

- is due to be discharged from a hospital or facility (see Appendix 4 for examples of notifiable discharges and the sections of the Acts that these apply to)
- dies
- escapes
- comes to the end of their sentence (eg, when under an order made under section 34(1) of the CP (MIP) Act).

⁷ Greater autonomy is defined based on the categories of section 52 leave.

⁸ The notification for a change of legal status is the responsibility of the Director of Mental Health.

Patients

DAMHS must notify a registered victim (or their representative), as soon as it is practicable, that the person who has offended against them has been made a patient (if the order is made under section 25(1)(a) or 34(1)(b) of the CP (MIP) Act). As part of that notification, the DAMHS must explain the meaning and consequences of the person's legal status to the victim and provide a list of future notifications that the victim is eligible to receive.

Registered victims will receive reasonable prior notice when the patient subject to VRA notifications is:

- granted a first period of unescorted leave under section 31 of the Mental Health Act
- granted a first period of unescorted overnight leave under section 31 of the Mental Health Act
- due to be discharged from a hospital or facility.

A registered victim will also receive notification as soon as it is practicable if the patient:

- is due to be discharged from a hospital or facility (see Appendix 4 for examples of notifiable discharges and the sections of the Acts that these apply to)
- dies
- escapes
- comes to the end of their sentence (eg, when under an order made under section 34(1) of the CP (MIP) Act.

Special care recipients

Care coordinators must ensure that a registered victim (or their representative) is notified, as soon as it is practicable, that the person who has offended against them has been made a special care recipient. This notification must explain the meaning and consequences of the person's legal status to the victim and provide a list of future notifications that the victim is eligible to receive.

Some of these future notifications inform registered victims when certain applications about the special care recipient are made and invite the victim to make a written submission about them. In particular, the victim will receive a notification when an application is put forward for the decision to grant:

- leave under section 66 of the IDCCR Act
- leave under section 67 of the IDCCR Act (if that leave of absence would permit the special care recipient to exercise greater autonomy than they have received in any other leave of absence granted to them before)⁹
- a change of legal status under section 31(3) or 33(3) of the CP (MIP) Act.¹⁰

⁹ Greater autonomy is defined based on the categories of section 67 leave.

¹⁰ The notification for a change of legal status is the responsibility of the Director of Mental Health.

In addition, a registered victim will receive notification, as soon as it is practicable, if the special care recipient:

- is due to be discharged from a hospital or facility (see Appendix 4 for examples of notifiable discharges and the sections of the Acts that these apply to)
- dies
- escapes
- comes to the end of their sentence (in some cases).

Care coordinators hold delegated responsibility for ensuring that notifications to victims happen. The victim coordinator administers these notifications nationally.

Care recipients

Care coordinators must ensure a registered victim (or their representative) receives a notification, as soon as it is practicable, that the person who offended against them has been made a care recipient (if the order is made under section 25(1)(b) or 34(1)(b) of the CP (MIP) Act). The notification must:

- explain the meaning and consequences of the person's legal status to the victim
- provide a list of future notifications that the victim is eligible to receive.

One of these future notifications informs registered victims, with reasonable prior notice, when an application is put forward for the decision to grant the care recipient leave under section 65 of the IDCCR Act (if that leave of absence would permit the care recipient to exercise greater autonomy than they have received through any other leave of absence granted to them before).

As part of this notification, registered victims receive an invitation to make a written submission on the decision.

In addition, a registered victim will receive notification, as soon as it is practicable, if the care recipient:

- is due to be discharged from a hospital or facility (see Appendix 4 for examples of notifiable discharges and the sections of the Acts that these apply to)
- dies
- escapes
- comes to the end of their sentence (in some cases).

Care coordinators hold delegated responsibility to ensure that notifications to victims happen and are recorded. The victim coordinator administers the notifications nationally.

Parts 3 to 7 give further detail of each of the notifications that are the responsibility of forensic health and disability services.

Inter-hospital transfers

Although legislation does not cover inter-hospital transfers specifically, it is important to consider their impact on registered victims. Give careful attention to any preferences that a registered victim has communicated to the DAMHS for any leave applications. Before passing any information to a registered victim, you need to take account of health information privacy considerations under the Privacy Act 2020.

In practical terms, before approving any inter-hospital transfer, it will be necessary to review the information that the service holds about the registered victim's preferences and make the Director of Mental Health aware of these.

Part 3: Victim notifications under the Victims' Rights Act 2002

Section 30A notification requirements

Under section 30A of the Victims' Rights Act, victims must receive notification that the person who has offended against them has been designated as one of the following:

- a special patient as defined in section 2(1) of the Mental Health Act
- a special care recipient as defined in section 6(2) of the IDCCR Act
- a patient under the Mental Health Act, through an order made under section 25(1)(a) or 34(1)(b) of the CP (MIP) Act
- a care recipient under the IDCCR Act, through an order made under section 25(1)(a) or 34(1)(b) of the CP (MIP) Act.¹¹

As part of this notification, it is necessary to explain the meaning and consequences of the person's designation and provide a list of the future notifications that the victim is eligible to receive.

When they receive the details of a registered victim, DAMHS (for victims of patients and special patients) and care coordinators (for victims of care recipients or special care recipients) should send the initial notification templated letter to the victim.

When a special patient or special care recipient has a change in designation in connection with the offence that changes the future notifications that a registered victim receives, DAMHS and care coordinators should consider whether the registered victim is eligible to receive another notification under section 30A.

Note: Section 30A of the Victims' Rights Act only applies to a victim 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.

For this reason, the section 30A notification does not apply to patients under section 25(1)(a) of the CP(MIP) Act if they are under a 'community treatment order', because they are not 'liable to be detained in a hospital'.

¹¹ This also includes a variation to a court order under section 86 of the IDCCR Act from secure care to supervised care, or the reverse.

Section 37 notification requirements

Notice of first unescorted leave of absence 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.¹² This will usually be a period of unescorted community leave granted under section 31 or 52 of the Mental Health Act 1992 or section 65 or 67 of the IDCCR Act. A victim should be notified only of the first period of unescorted community leave under 37(2)(b) if the person either is under an order made under section 25(1)(a) or (b) or section 34(1)(b) of the CP (MIP) Act or is an ordinary patient or care recipient.

As of 14 December 2022, there are additional requirements for notifying registered victims about:

- section 52 and section 50 leave under the Mental Health Act (see Part 5)
- section 65 and section 67 leave under the IDCCR Act (see Part 6).

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 Act or section 65 or 67 of the IDCCR Act. A victim should be notified of only the first period of unescorted overnight community leave under 37(2)(ba) if the person either is under an order made under section 25(1)(a) or (b) or section 34(1)(b) of the CP (MIP) Act or is an ordinary patient.

As of 14 December 2022, there are additional requirements for notifying registered victims about:

- section 52 and section 50 leave applications under the Mental Health Act (see Part 5)
- section 65 and section 67 leave applications under the IDCCR Act (see Part 6).

Notice of upcoming 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.¹³ In practice, giving

¹² Under section 37(3) of the VRA, 'hospital' and 'facility' include the land on which the hospital or facility is situated.

¹³ Appendix 4 outlines examples of discharges that should be notified to victims.

'reasonable prior notice' means choosing a time to notify the victim before the event occurs that is based on good judgement or being fair and practical about when to give notice.

As of 14 December 2022, there are additional requirements for notifying registered victims about applications for a change of legal status under section 31(3) or 33(3) of the CP (MIP) Act (see Part 4).

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. 'As soon as it is practicable' in this context usually means immediately or within 24 hours.

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). New Zealand Police has advised that if the risk to the victim is imminent, then the clinical team should notify the Police 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 section 37(2)(c) notifications by telephone.

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 provide any information about the circumstances of the person's death.

Section 38 notification requirements

Under section 38 of the VRA, 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. 'As soon as it is practicable' in this context usually means within 1 to 3 days. This notification should include informing the victim that they will not receive any more notifications from health agencies about that person or offence.¹⁴

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

¹⁴ Victims may continue to be eligible for notifications from other agencies (eg, under section 36 of the VRA if the person subject to notifications breaches parole conditions).

the Mental Health Act or special care recipients under section 69 of the IDCCR Act 2003. These are the people who became liable to be detained in connection with the offence because of one of the following orders or provisions:

- after an application under section 45(2) or an arrangement under section 46 of the Mental Health Act where they are transferred from prison to hospital
- after an application under section 29(1) of the IDCCR Act 2003 where they are transferred from prison to a secure facility
- in accordance with an order under section 34(1)(a) of the CP (MIP) Act when a person is subject to detention in prison and either a mental health service or secure facility.

Closing notifications

The 3 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 discharged¹⁵
- dies.

If a person subject to notifications is transferred back to prison under section 47 of the Mental Health Act or section 71 of the IDCCR Act, the DAMHS, care coordinators or victim coordinators should forward any victim details to the Department of Corrections (section 33(4)). DAMHS or victim coordinators must also give victims reasonable prior notice of the transfer.

In any situation where the victim is no longer eligible to receive notifications, the DAMHS, care coordinators or victim coordinators 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 notifications from the health system 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, other agencies such as the Department of Corrections would then take responsibility for the notification process under the VRA.

Please see Appendix 5 for an overview of responsibilities under sections 37 and 38 of the VRA.

¹⁵ Appendix 4 gives examples of notifiable discharges. Note that these include a change of legal status under section 31(3) or 33(3) of CP(MIP) Act.

Part 4: Victim notifications and submissions under the CP (MIP) Act

Change of status under section 31(3) or 33(3)

Under section 33B of CP (MIP) Act, victims must receive notifications of upcoming decisions being made under section 31(3) or 33(3) of the CP (MIP) Act. The Director of Mental Health must:

- notify a victim that they intend to report to the Minister of Health about the continued detention of a special patient or special care recipient
- explain to the victim the process under section 31(3) or 33(3) and how the victim may participate in that process.

The Director of Mental Health cannot delegate their responsibilities to notify victims of a change of legal status so must undertake them personally.

Under sections 33C and 33D of the CP (MIP) Act, victims may make a written submission on whether the Director of Mental Health should support a change of status application. After receiving an application for a change of legal status, the Director of Mental Health will notify the victim of the application, explain the process of a change of legal status, and invite the victim to make a submission to the Office of the Director of Mental Health within 14 days.

The Director of Mental Health must consider any written submissions from a victim when deciding whether to support an application for a change of legal status.

Once the Director of Mental Health has received the submission, they will meaningfully consider the submission and how to address any reasonable concerns the victim raises. To do so, they may need to discuss the victim's submission with the DAMHS or care coordinators, to consider whether the process has addressed any reasonable concerns the victim raised and, if it has not, whether any changes are required to the risk management plan for the special patient or special care recipient. The Director of Mental Health will then report to the Minister of Health on whether they support the application.

Under section 33E of the CP (MIP) Act, the Director of Mental Health must notify victims of decisions made under sections 31(3) and 33(3) of the CP (MIP) Act. When the Minister of Health has made a decision, the Director of Mental Health will notify the victim of one of the following outcomes.

- The Director of Mental Health supported a change of legal status, and the Minister of Health approved the change of legal status.
- The Director of Mental Health supported a change of legal status, and the Minister of Health declined the change of legal status.
- The Director of Mental Health did not support a change of legal status.

A change of status is an example of a notifiable discharge (see Appendix 4) and will result in the closing of notifications (see 'Closing notifications' in Part 3). When the Director of Mental Health notifies the victim that they supported a change of legal status, and the Minister of Health approved that change, the Director of Mental Health will also inform the victim that they will not receive any further notifications and will be removed from the victim notification register. DAMHS should let their victim coordinator know of the change of status, so that they can remove the victim from their region-specific register.

The following figures summarise how and when the Director of Mental Health notifies the victim during the decision-making process for a change of status under section 33(3) (Figure 2) and section 31(3) (Figure 3).

Figure 2: Notifying the victim during the decision-making process for a section 33(3) change of status for special patients and special care recipients found not criminally responsible due to insanity

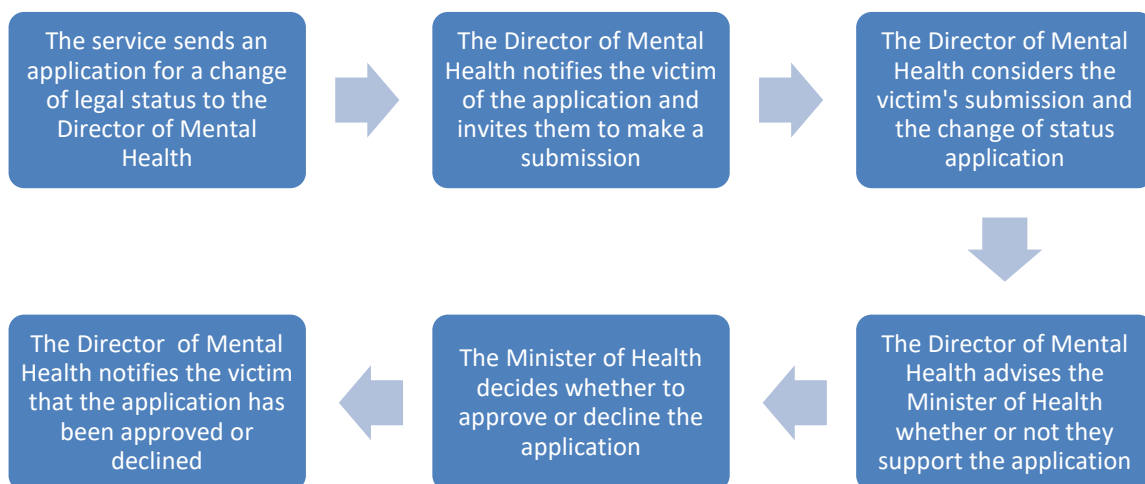
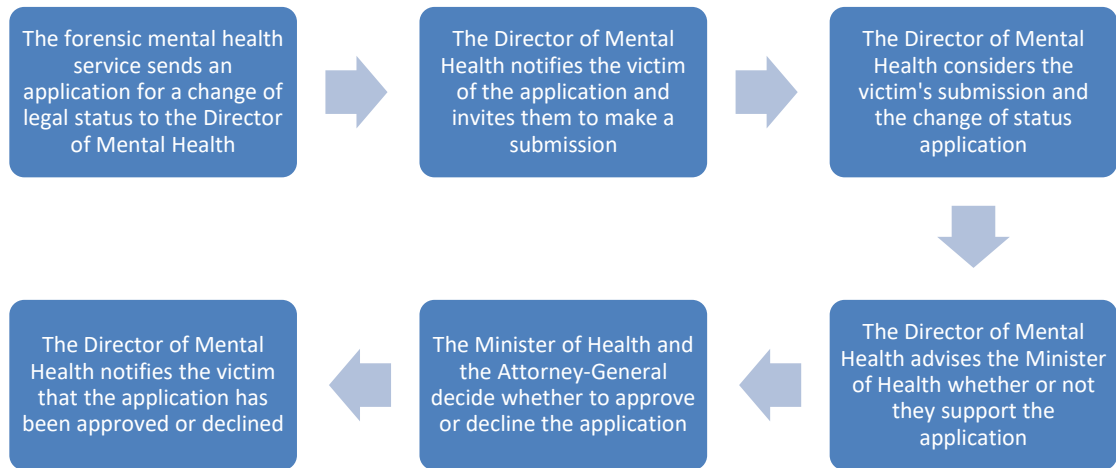


Figure 3: Notifying the victim during the decision-making process for a section 31(3) change of status for special patients and special care recipients found unfit to stand trial



Part 5: Victim notifications and submissions under the Mental Health Act

Leave under section 52

Under section 52B of the Mental Health Act, the DAMHS must notify victims of upcoming decisions under section 52 of the Mental Health Act. They must explain:

- the process of approving section 52 leave
- how victims can participate in the decision.

This section applies if the Director of Mental Health intends to decide whether to grant a special patient leave of absence under section 52(1) of the Mental Health Act, and if that leave of absence would permit the special patient to exercise greater autonomy outside the hospital than they have received with any other leave of absence granted to them before.

Under sections 52C and 52D of the Mental Health Act, victims may make a written submission on the decision about whether to grant the special patient a leave of absence under section 52(1).

For this reason, the DAMHS must notify victims the first time that an application is made to grant leave to a special patient, for each category of leave that requires the Director of Mental Health's approval (see Table 1 for these categories). As part of this notification, the DAMHS must invite the victim to make a submission on the decision.

Table 1: Leave categories for special patients

Staff-escorted leave outside the hospital grounds
Staff-escorted short-term leave, where the special patient is left unescorted at their destination (eg, to attend a community programme or to make a home visit)
Unescorted short leave, not including overnight leave
Overnight leave (1–3 days)
Overnight leave (4–7 days)

In some instances, the Director of Mental Health may need to grant a special patient one-off leave that falls outside of these categories. If the one-off leave would permit the special patient to exercise greater autonomy outside the hospital than they have received on any leave granted to them before, the DAMHS must notify the victim and invite them to make a submission on it. If it is unclear whether the leave will permit greater autonomy, DAMHS should seek advice from the Director of Mental Health.

The DAMHS must notify a victim that the Director of Mental Health intends to decide whether to grant a leave of absence to a special patient under section 52(1). They must also:

- explain the process under section 52
- invite the victim to make a submission on the decision.

In practice, the DAMHS will provide this notification when they are considering whether to support an application to the Director of Mental Health.

Once the DAMHS has approved a section 52 leave application from the special patient's treating team, the DAMHS will send the application to the Director of Mental Health. They will also send the templated notification letter to the registered victim(s), which:

- notifies the victim of the section 52 leave application
- explains the approval process for section 52 leave
- invites the victim to make a submission within 14 days.

If a submission arrives later than this timeframe (eg, due to postal delays), the DAMHS and the Director of Mental Health should use their discretion in deciding to whether to accept the submission. The date of notification and date of receiving the submission should be recorded in a register (see 'Maintaining accurate information about the victim' in Part 2). If they receive no new submission but have one on file, the DAMHS should consider the submission on file.

If appropriate and/or the victim requests it, the victim coordinator or DAMHS may call the victim when the letter is sent out, to let them know that an invitation to submit their views is on the way.

The submissions must be held securely and must not be shared with anyone outside the special patient's treating team. At no point can anyone share the submission with the special patient, recognising in particular that it is likely to contain information that could identify the victim.

It is expected that the DAMHS will consider any submission from a victim and address any reasonable concerns that the victim raises. Evidence that the DAMHS has considered the victim's concerns should be provided in writing along with the submission. For example, a written record might note that the DAMHS adjusted the leave conditions to prevent a special patient from visiting places near where a victim lives or works. It may be appropriate for the DAMHS to discuss aspects of a victim's submission with the special patient's treating team. However, the DAMHS should treat the victim's personal information as confidential and should not share it with other

clinicians. For this reason, they should remove the victim’s personal information from any submission before sharing it with the treating team.

The Director of Mental Health will consider any submission from a victim and any changes the DAMHS makes to the leave provision when deciding whether to grant section 52 leave. Under section 52E of the Mental Health Act, once the Director of Mental Health has made their decision, the victim must receive notifications of decisions under section 52.

Once the Director of Mental Health has decided whether to approve the leave application or not, the templated letter will be sent to any registered victim (or their representative) on behalf of the Director of Mental Health. This letter will set out:

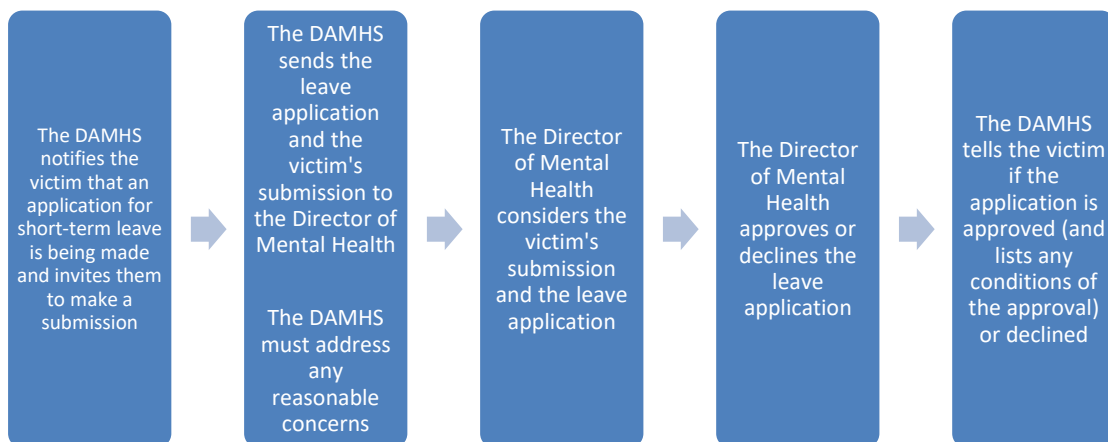
- whether the Director of Mental Health has granted a special patient section 52 leave
- where the Director of Mental Health has granted the leave, any conditions applying to the special patient.

Once the Director of Mental Health has approved the leave application, the DAMHS will send out the templated outcome letter to any registered victim on behalf of the Director of Mental Health.

Figure 4 summarises how and when the DAMHS notifies a victim through the decision-making process on section 52 short-term leave.

Note: The Director of Mental Health may withhold advice of a particular condition if, in their opinion, disclosing the condition would unduly interfere with the privacy of any other person (other than the special patient).

Figure 4: Notifying the victim during the decision-making process on section 52 short-term leave



Leave under section 50A

Under section 50B of the Mental Health Act, the DAMHS must notify a victim of the Director of Mental Health's intention to decide whether to support an application to the Minister of Health for ministerial long leave under section 50A of the Mental Health Act. This means that the DAMHS must notify a victim every time an application for ministerial long leave is put forward to the Director of Mental Health. This includes the person's first application, as well as any later applications for extension of leave.

In notifying the victim, the DAMHS must explain:

- the process of approving section 50A leave
- how the victim can participate in the decision.

Under sections 50C and 50D of the Mental Health Act, victims may make a written submission on whether the Director of Mental Health should support the proposed leave of absence. The DAMHS must notify a victim if the Director of Mental Health is required to decide whether to support the proposed leave of absence of a special patient under section 50A. In practice, the DAMHS will provide this notification when they are considering whether to support an application to the Director of Mental Health.

Once the DAMHS has approved a section 50A leave application from the special patient's treating team, the DAMHS will send the application to the Director of Mental Health. They will also send the templated notification letter to the registered victim(s), which:

- notifies the victim of the section 50A leave application
- explains the approval process for section 50A leave
- invites the victim to make a submission within 14 days.

If a submission arrives later than this timeframe (eg, due to postal delays), the DAMHS and the Director of Mental Health should use their discretion in deciding whether to accept the submission. The date of notification and date of receiving the submission should be recorded in a register (see 'Maintaining accurate information about the victim' in Part 2). If they receive no new submission but have one on file, the DAMHS should consider the submission on file.

If appropriate and/or the victim requests it, the victim coordinator or DAMHS may call the victim when the letter is sent out, to let them know that an invitation to submit their views is on the way.

As outlined in the Special Patients and Restricted Patients: Guidelines for Regional Forensic Mental Health Services¹⁶, applications for an extension of a special patient's long leave must be sent to the Ministry of Health 6 weeks prior to the expiration date. This means that the registered victim must be invited to make a submission 8 weeks before the expiration date, to allow for the 14-day period to submit.

¹⁶ Ministry of Health. 2022. Special Patients and Restricted Patients: Guidelines for Regional Forensic Mental Health Services. Wellington: Ministry of Health.

The submissions must be held securely and must not be shared with anyone outside the special patient's treating team. At no point can anyone share the submission with the special patient recognising in particular that it is likely to contain information that could identify the victim.

It is expected that the DAMHS will consider any submission from a victim and address any reasonable concerns that the victim raises. Evidence that the DAMHS has considered the victim's concerns should be provided in writing along with the submission. For example, a written record might note that the DAMHS adjusted the leave conditions to prevent a special patient from visiting places near where a victim lives or works. It may be appropriate for the DAMHS to discuss aspects of a victim's submission with the special patient's treating team. However, the DAMHS should treat the victim's personal information as confidential and should not share it with other clinicians.

The Director of Mental Health will consider any submission from a victim and any changes to the leave conditions that the DAMHS proposes when deciding whether to support an application for ministerial long leave. Under section 50E of the Mental Health Act, victims must receive notifications of decisions made under section 50A. Once the Minister of Health has made a decision on the leave application, the templated letter will be sent to any registered victim (or their representative) on behalf of the Director of Mental Health.

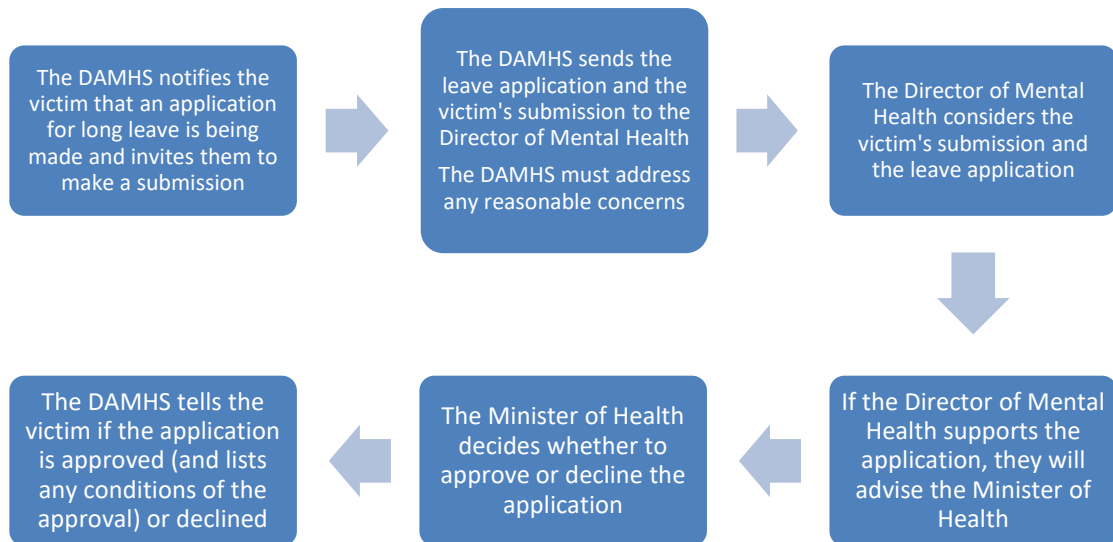
This letter will set out:

- whether the Director of Mental Health supports the proposed leave of absence
- where the Director of Mental Health supports the proposed leave of absence, whether the Minister has granted the leave of absence
- where the Minister has granted the leave of absence, any conditions applying to the special patient.

Note: The Director of Mental Health may withhold advice of a particular condition if, in their opinion, disclosing the condition would unduly interfere with the privacy of any other person (other than the special patient).

Figure 5 summarises how and when the DAMHS notifies a victim through the decision-making process on section 50A long leave.

Figure 5: Notifying the victim during the decision-making process for section 50A long leave



Review by the Mental Health Review Tribunal under section 80

Under section 80(2A) of the Mental Health Act, the Convenor of the Mental Health Review Tribunal (the Tribunal) must notify the Director of Mental Health of an application for a review of the special patient's condition.

Under section 80(2B), when they receive this notice, the Director of Mental Health must:

- notify the victim that the Tribunal has received an application for a review of the special patient's condition
- explain to the victim the process for reviewing a special patient's condition
- explain how the victim may participate in that process. Victims have 10 days to provide a submission to the Tribunal.

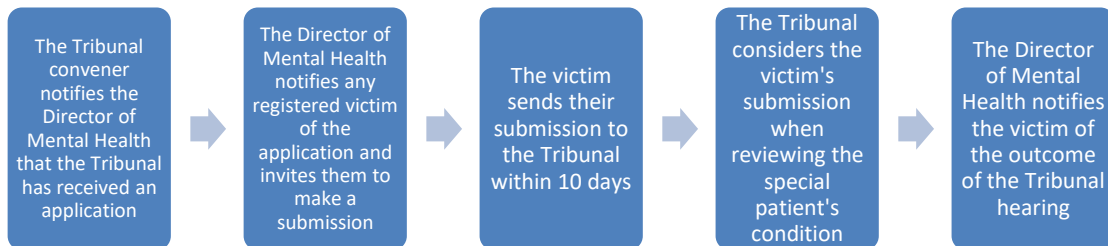
The submissions must be held securely and the victim's personal information should be treated as confidential. The submission can be shared with people who attend the Tribunal hearing, such as lawyers and clinicians, and with the special patient in the interests of natural justice. However, the victim's personal information, such as contact details and address, must not be shared.

It is expected that, when reviewing a special patient's condition, the Tribunal will consider any reasonable concerns that a victim may have.

Once the Tribunal has made its decision, it will send a copy of this decision to the Director of Mental Health. The Director of Mental Health will then notify the victim of the Tribunal's decision.

Figure 6 summarises how and when the Director of Mental Health notifies a victim through the review process of the Mental Health Review Tribunal.

Figure 6: Notifying the victim during the review process of the Mental Health Review Tribunal



Emergency leave

Special patients may need to use section 52 leave to access urgent medical care. It may be necessary to authorise this leave urgently. If the category of section 52 leave would permit the special patient to exercise greater autonomy outside the secure facility than they have received in any other period of leave granted to them before, a victim must be notified and invited to make a submission.

The templated initial notification letter that victim coordinators send to victims explains that in some circumstances it may be necessary to urgently authorise leave for a special patient to receive medical treatment. The letter will invite the victim to make a submission in advance, in case it is ever necessary to make a decision to authorise urgent medical leave. If in future the special patient requires urgent leave, the Director of Mental Health can then refer to the submission and consider the victim's concerns.

Even if a victim has provided a submission in advance, the victim coordinator must still notify them of an application for urgent leave and the outcome of the decision.

Cancelling leave

If leave is cancelled or revoked, the Privacy Act 2020 does not allow for victims to receive notification of this. If a new leave application is put forward after the cancellation or revocation of leave, the submission process should be followed again in the way the above sections outline.

If leave is declined, the submission process should be followed each time an application is put forward again for approval.

Summary of responsibilities and timeframes for notifications and submissions

Table 2 summarises the responsibilities and timeframes for notifications and submissions that this part has covered.

Table 2: Responsibilities and timeframes for victim submissions and notifications under the Mental Health Act

Application	Responsible for notifying and inviting to submit	Timeframe for victim to make a submission	Responsible for notifying about outcome
Leave under section 52 of the Mental Health Act	DAMHS	14 days	DAMHS
Leave under section 50A of the Mental Health Act	DAMHS	14 days	DAMHS
A Mental Health Review Tribunal hearing under section 80 of the Mental Health Act	Director of Mental Health	10 days	Director of Mental Health

The timeframes for submissions were decided during a consultation process at the end of 2022. The decision to place a time limit on submissions balances the rights of victims with the rights of patients. In this way, the submission process should avoid unnecessary delay that could impact on the patient's progression.

Part 6: Victim notifications and submissions under the IDCCR Act

Leave under section 65

Under section 65A of the IDCCR Act, the care manager must notify a victim of upcoming decisions under section 65. The care manager must explain to victims:

- the process of approving section 65 leave
- how they can participate in that process.

This section applies if a care manager intends to decide whether to authorise a care recipient to be on leave under section 65(1) of the IDCCR Act, and that leave of absence would permit the care recipient to exercise greater autonomy outside the facility than they had in any other leave of absence granted to them before.

Under sections 65B and 65C, victims may make a written submission on the decision of whether to grant the care recipient a leave of absence under section 65(1).

This means that, for each category of leave that the care manager is required to approve, the first time an application is made to grant that leave to a care recipient, the victim has the right to receive notification of and make a submission on that application. Table 3 sets out the categories of leave that this right applies to.

Table 3: Leave categories for care recipients

Staff-escorted leave (urgent medical care — see 'Emergency leave' section in this part)
Staff-escorted leave (routine)
Unescorted leave
Staff-escorted overnight leave (1–3 nights)
Staff-escorted overnight leave (4–6 nights)
Unescorted overnight leave (1–3 nights)
Unescorted overnight leave (4–6 nights)

Where there is a notifiable victim, the care manager must inform the care coordinator. The care coordinator can then support the process of administering the victim notification through the national victim coordinator.

Once the care manager has received a section 65 leave application from the care recipient's treating team, they must send the leave application to the care coordinator. The care coordinator will determine if the leave application would allow the care recipient to exercise greater autonomy outside the facility than they have had through any other leave granted to them before.

If the leave would provide this greater autonomy, the care manager asks the national victim coordinator to send the templated letter to the victim. This letter will:

- notify the victim of the section 65 leave application
- explain the approval process for section 65 leave
- invite the victim to make a submission within 14 days.

If a submission arrives later than this timeframe (eg, due to postal delays), the care coordinator and the Director-General of Health (or their delegate) should use their discretion in deciding whether to accept the submission. The date of notification and date submission received should be recorded in a register (see 'Maintaining accurate information about the victim' in Part 2). If they receive no submission but have one on file, the care coordinator should consider the submission on file.

If appropriate and/or the victim requests it, the victim coordinator or care coordinator may call the victim when the letter is sent out, to let them know that an invitation to submit their views is on the way.

The submissions must be held securely and must not be shared with anyone outside the care recipient's support team. At no point can anyone share the submission with the care recipient recognising in particular that it is likely to contain information that could identify the victim..

After receiving the submission, the care coordinator will send the submission to the care manager. When deciding whether to grant section 65 leave, the care manager must consider any submission from a victim and address any reasonable concerns they raise. For example, they might adjust the leave conditions to prevent the care recipient from visiting places near where the victim lives or visits. It may be appropriate for the care manager to discuss aspects of a victim's submission with the care recipient's treating team. However, the care manager should treat the victim's personal information as confidential and should not share it with other clinicians.

Under section 65D of the IDCCR Act, the care manager must ensure that victims are notified of decisions made under section 65. The care manager must advise the care coordinator of:

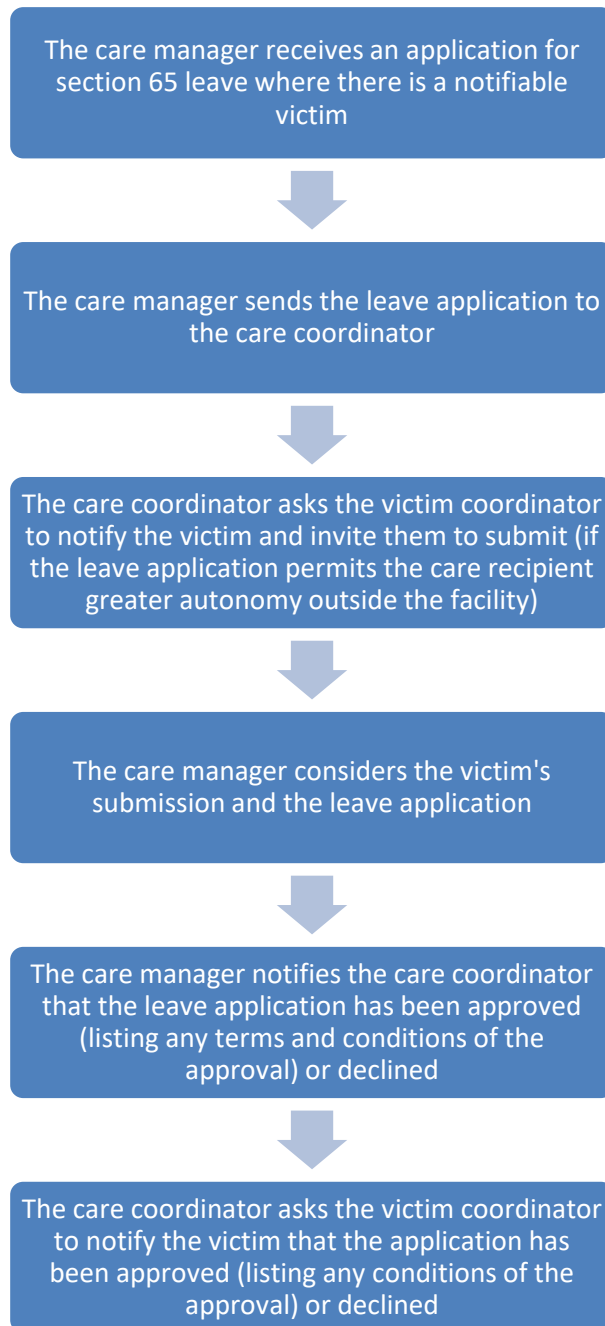
- whether the care manager has authorised a care recipient to be on leave under section 65
- where the care manager has authorised the leave, any terms and conditions applying to the care recipient.

The care coordinator will then ask the national health victim coordinator to send the templated decision letter to the victim.

Note: The care manager may withhold advice of a particular condition if, in their opinion, disclosing the condition would unduly interfere with the privacy of any other person (other than the special patient).

Figure 7 summarises how and when a victim coordinator notifies a victim through the process of deciding whether to grant leave under section 65.

Figure 7: Notifying the victim during the decision-making process for section 65 leave



Leave under section 66

Under section 67B of the IDCCR Act, a victim must receive notification of upcoming decisions under section 66. This section applies if the Director-General of Health (or their delegate) is required to decide whether to support the proposed leave of absence under section 66. The Director-General of Health (or their delegate) must explain to the victim:

- the process of approving section 66 leave
- how the victim can participate in that process.

Under sections 67D and 67E, victims may make a written submission on whether the Director-General of Health (or their delegate) should support the section 66 leave application.

Where there is a notifiable victim, the care manager must send the leave application to the care coordinator. After receiving this notification of a section 66 leave application, the care coordinator will ensure that the victim receives notification through the national victim coordinator.

The national victim coordinator will send the templated letter to the victim. This letter will:

- notify the victim of the section 66 leave application
- explain the approval process for section 66 leave
- invite the victim to make a submission within 14 days.

If a submission arrives later than this timeframe (eg, due to postal delays), the care coordinator and the Director-General of Health (or their delegate) should use their discretion as to whether or not to accept the submission. The date of notification and date submission received should be recorded in a register (see 'Maintaining accurate information about the victim' in Part 2). If they receive no submission but have one on file, the care coordinator should consider the submission on file.

If appropriate and/or the victim requests it, the victim coordinator or care coordinator may call the victim when the letter is sent out, to let them know that an invitation to submit their views is on the way.

The submissions must be held securely and must not be shared with anyone outside the care recipient's support team. At no point can anyone share the submission with the special care recipient recognising in particular that it is likely to contain information that could identify the victim.

After receiving the victim's submission, the victim coordinator must send it to the care coordinator. The care coordinator must then send the submission and the leave application to the Director-General of Health (or their delegate). It is expected that the care coordinator, along with the care manager, considers any submission from a victim and addresses any reasonable concerns they raise. In addition, they should send evidence to the Director-General of Health (or their delegate) that the care coordinator has considered the victim's concerns. For example, the care coordinator may have

adjusted the leave conditions to prevent a special care recipient from visiting places near where a victim lives or works.

It may be appropriate for the care coordinator to discuss aspects of a victim's submission with the special care recipient's treating team, in order to address the victim's concerns. However, they should treat the victim's personal information as confidential and not share it with other clinicians.

The Director-General of Health (or their delegate) will consider any submission from a victim when deciding whether to support an application for leave under section 66(1). Under section 67F of the IDCCR Act, victims must receive notification of decisions made under section 66.

After the Director-General of Health (or their delegate) has made a decision, the care coordinator must arrange for the victim coordinator to send the templated letter to the victim, notifying them of the decision about the leave application.

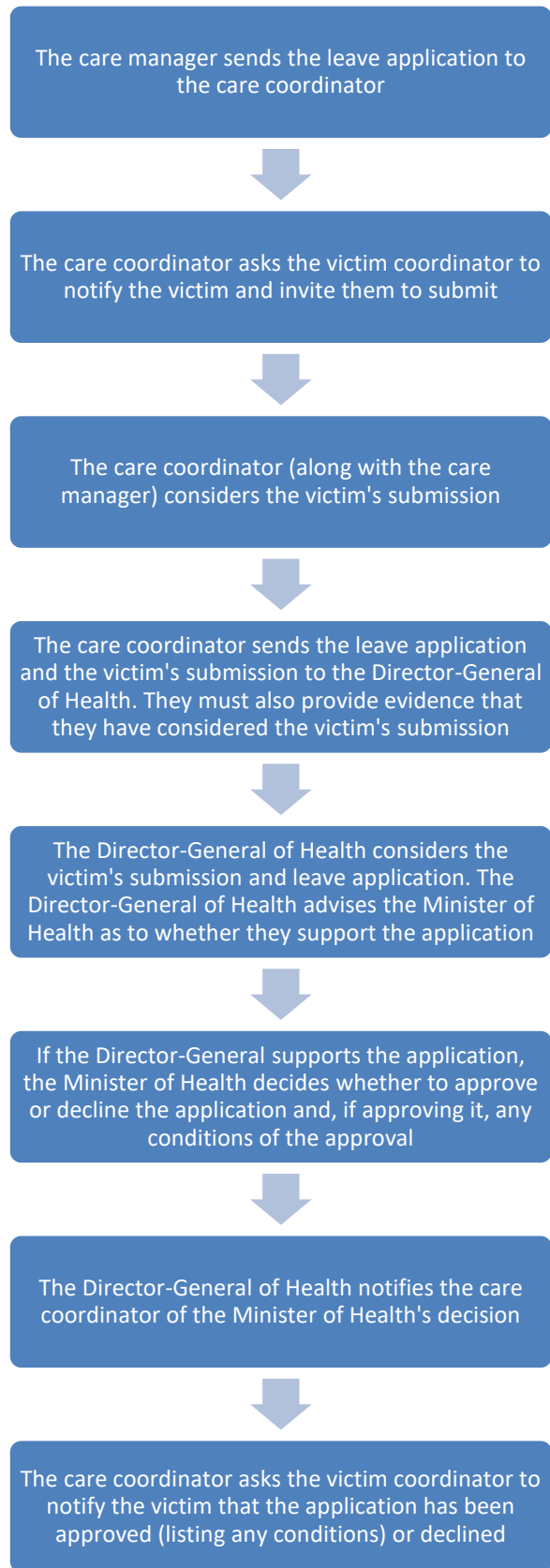
This letter will notify the victim:

- whether the Director-General of Health (or their delegate) supports the proposed leave under section 66(1)
- where the Director-General supports the proposed leave, whether the Minister has authorised the leave under section 66(1)
- where the Minister has authorised the leave, any terms and conditions that apply.

Note: The Director-General of Health may withhold advice of a particular condition if, in their opinion, disclosing the condition would unduly interfere with the privacy of any other person (other than the special care recipient).

Figure 8 summarises how and when a victim coordinator notifies a victim through the process of deciding whether to grant leave under section 66.

Figure 8: Notifying the victim during the decision-making process for section 66 leave



Leave under section 67

Under section 67B of the IDCCR Act, a victim must receive notification of upcoming decisions under section 67. This section applies if the Director-General of Health (or their delegate) is required to authorise a leave of absence under section 67, and if that leave of absence would permit the special care recipient to exercise greater autonomy outside the secure facility than they could under any other leave of absence granted to them before. The Director-General of Health (or their delegate) must explain to victims:

- the process of approving section 67 leave
- how the victim can participate in that process.

Under sections 67D and 67E, victims may make a written submission on whether the Director-General of Health (or their delegate) should approve the section 67 leave application.

This means that for each category of leave that the Director-General of Health (or their delegate) is required to approve, the first time an application is made to grant that leave to a special care recipient, victims must receive a notification of that application and an invitation to make a submission on it. Table 4 sets out the categories of leave that this right applies to.

Table 4: Leave categories for special care recipients

Staff-escorted leave (urgent medical care — see 'Emergency leave' section in this part)
Staff-escorted leave (routine)
Unescorted leave
Staff-escorted overnight leave (1–3 nights)
Staff-escorted overnight leave (4–6 nights)
Unescorted overnight leave (1–3 nights)
Unescorted overnight leave (4–6 nights)

Where there is a notifiable victim, the care manager must send the leave application to the care coordinator. After receiving this notification of a section 67 leave application, the care coordinator will ensure that the victim receives notification through the national victim coordinator.

The national victim coordinator will send the templated letter to the victim. This letter will:

- notify the victim of the section 67 leave application
- explain the approval process for section 67 leave
- invite the victim to make a submission within 14 days.

If a submission arrives later than this timeframe (eg, due to postal delays), the care coordinator and the Director-General of Health (or their delegate) should use their discretion in deciding whether to accept the submission. The date of notification and date submission received should be recorded in a register (see 'Maintaining accurate information about the victim' in Part 2). If they receive no submission but have one on file, the care coordinator should consider the submission on file.

If appropriate and/or the victim requests it, the victim coordinator or care coordinator may call the victim when the letter is sent out, to let them know that an invitation to submit their views is on the way.

The submissions must be held securely and must not be shared with anyone outside the special care recipient's support team. At no point can anyone share the submission with the special care recipient recognising in particular that it is likely to contain information that could identify the victim.

After receiving the victim's submission, the health victim coordinator will send it to the care coordinator. The care coordinator must then send the submission and the leave application to the Director-General of Health (or their delegate). It is expected that the care coordinator, along with the care manager, considers any submission from a victim and addresses any reasonable concerns they raise. In addition, they should send evidence to the Director-General of Health (or their delegate) that the care coordinator has considered the victim's concerns. For example, the care coordinator might adjust the leave conditions to prevent a special care recipient from visiting places near where a victim lives or works.

It may be appropriate for the care coordinator to discuss aspects of a victim's submission with the special care recipient's treating team. However, they should treat the victim's personal information as confidential and should not share it with other clinicians.

The Director-General of Health (or their delegate) will consider any submission from a victim when deciding whether to support an application for leave under section 66(1). Under section 67G of the IDCCR Act, victims must receive notification of decisions made under section 67.

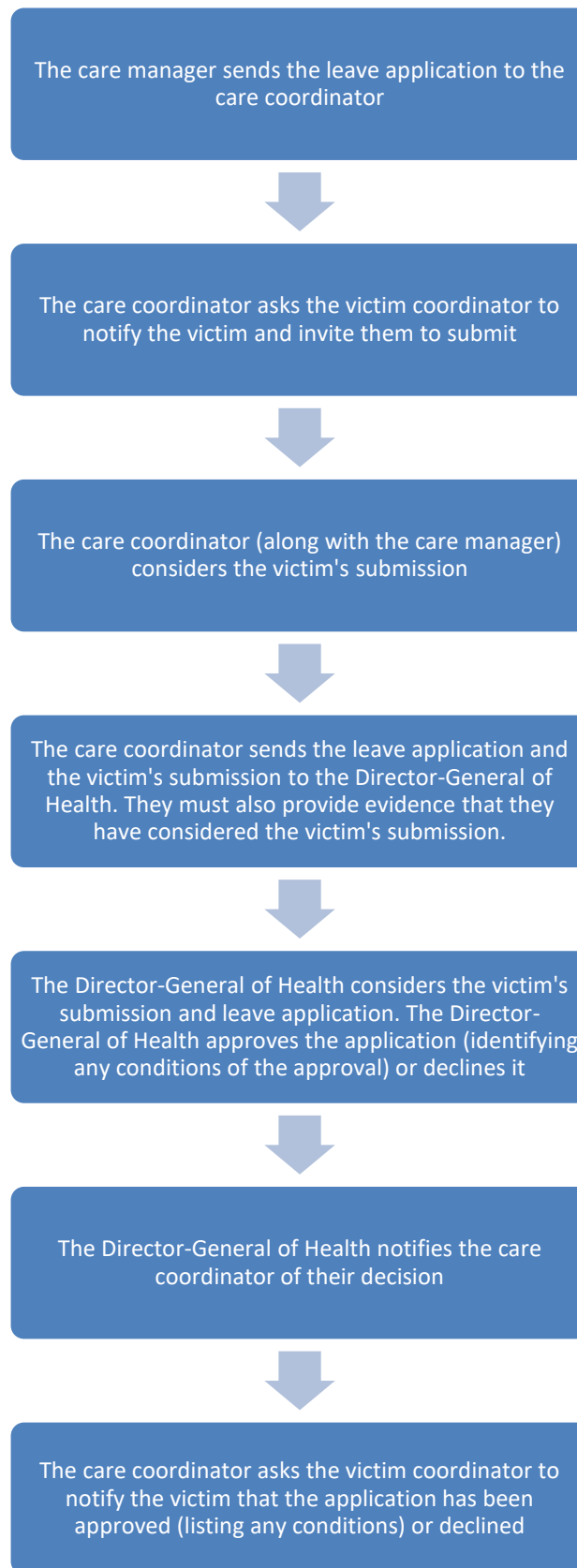
Once the Director-General of Health (or their delegate) has made a decision, the care coordinator must arrange for the victim coordinator to send the templated letter to the victim, notifying them of the decision about the leave application. This letter will notify the victim:

- whether the Director-General has authorised the leave of absence under section 67(1)
- where the leave has been authorised, any terms and conditions that apply.

Note: The Director-General may withhold advice of a particular condition if, in their opinion, disclosing the condition would unduly interfere with the privacy of any other person (other than the special patient).

Figure 9 summarises how and when a victim coordinator notifies a victim through the process of deciding whether to grant leave under section 67.

Figure 9: Notifying a victim during the decision-making process for section 67 leave



Emergency leave

To access urgent medical care, care recipients may need to use section 65 leave and special care recipients may need section 67 leave. It may be necessary to authorise this leave urgently. If the category of section 65 or section 67 leave would permit the care recipient or special care recipient to exercise greater autonomy outside the secure facility than they have had through any other period of leave granted to them before, a victim must receive a notification of this application and an invitation to make a submission on it.

The templated initial notification letter that a care coordinator sends to victims of a care recipient or a special care recipient explains that in some circumstances it may be necessary to urgently authorise leave for medical treatment. The letter will invite the victim to make a submission in advance, in case it is ever necessary to make a decision to authorise urgent medical leave. If in future the care recipient or special care recipient requires urgent leave, the decision-maker can then refer to this submission and consider the concerns of the victim.

Even if a victim has provided a submission in advance, the care coordinator must still notify them of an application for urgent leave and the outcome of the decision.

Cancelling leave

If leave is cancelled, the Privacy Act 2020 does not allow victims to receive notification of this. If a new leave application is put forward after the revocation of leave, the submission process should be followed again in the way the above sections outline.

If leave is declined, the submission process should be followed each time an application is put forward again for approval.

Summary of responsibilities and timeframes for notifications and submissions

Table 5 summarises the responsibilities and timeframes for notifications and submissions that this part has covered.

Table 5: Responsibilities and timeframes for victim submissions and notifications under the IDCCR Act

Notification	Responsible for notification and submission process	Administered by	Timeframe for victim to submit
Section 65 leave	Care manager	Victim coordinator	14 days
Section 66 leave	Care coordinator	Victim coordinator	14 days
Section 67 leave	Care coordinator	Victim coordinator	14 days

The timeframes for submissions were decided during a consultation process at the end of 2022. The decision to place a time limit on submissions balances the rights of victims with the rights of care recipients. In this way, the submission process should avoid unnecessary delay that could impact on the progression of a care recipient or special care recipient.

Part 7: Making victim notifications

Section 46 of the VRA allows for notifying victims by telephone, post, fax or email, or a combination of these. However, it also states that nothing prevents someone from giving notice by any other means. Other means include, but are not limited to, sending a text message and notifying the victim in person with family, whānau or other support such as a kaumātua present. Victim coordinators 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.

Consider confidentiality of information when making notifications. Address all posted notifications to the victim, using a plain envelope with a post office box as the return address.

If the victim has nominated a representative, send all notifications to the representative rather than the victim. The only exception is for notifications that a person has escaped and is absent without approved leave. In this case, 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, give notice 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 choosing a time to notify the victim before the event occurs that is based on good judgement or being fair and practical about when to give notice. The Ministry of Health considers that, in general, where the event is planned, you should give notifications 14 days in advance of that planned event to allow for the victim to make a submission on certain decisions.

Some notifications may alarm victims. In making notifications, DAMHS, care coordinators and victim coordinators 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.victimsinfo.govt.nz). You should also make victims aware that they can contact Victim Support on 0800 042 846 or visit its website (www.victimssupport.org.nz).

Limit the information you give to victims to that prescribed under the VRA, unless the person subject to notifications has given consent to disclose additional information.

It is not appropriate for notifications to victims to include details about the accommodation of the special patient, patient, special care recipient or care recipient, 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

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

- If appropriate, contact the victim to confirm the victim's details are correct before sending notifications.
- If posting notifications, send economy tracked letters with a tracking number, requiring a signature to confirm delivery.
- If appropriate, call victims to let them know that a letter or email is on its way to them.
- If emailing notifications manually, select the 'read receipt' tracking option, if available, to confirm the notification has reached the victim.
- If you cannot contact the victim, 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 you are still unable to contact the victim, contact Police and the Department of Corrections to ask if they have any updated contact details for the victim.
- If you still cannot make the notification, contact the Office of the Director of Mental Health in the Ministry of Health for further advice.

Providing general information to victims

DAMHS or victim coordinators must provide a victim or another affected person with information about any programmes, remedies or services available to them through the health service (section 11, VRA).

DAMHS or victim coordinators should notify victims of their right to withdraw their request to receive notifications. A victim should make any such request in writing, which can be by email. Inform the victim when their request has been actioned (section 33B, VRA).

DAMHS or victim coordinators should notify victims that victims can contact the service in writing if their victim notification contact details change in any way.

DAMHS or victim coordinators 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 and victim notifiers 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), a special patient, patient, special care recipient or care recipient may be told that they are subject to the victim notification requirements of the VRA. This information may include details about when notifications may occur and when notifications will end.

When the person receives this information, the responsible clinician, care manager and clinical team must ensure that the victim's confidentiality is maintained.

Confidentiality

Maintain a victim's confidentiality at all times. This especially applies with the person subject to notifications under the VRA: no one may, directly or indirectly, disclose to this person the current address or contact details of any of their victims.

Maintain the confidentiality of the person who is subject to notifications under the VRA at all times, 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, help both of them to recover.

DAMHS and victim coordinators must establish and maintain systems that prevent any unauthorised person from accessing information about victims.

DAMHS, victim coordinators and care coordinators should consider the Privacy Act 2020 and the Health Information Privacy Code when making decisions on disclosing information about a person receiving care in a health setting.

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) who is likely to give them notice:

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

After receiving such details, the party must confirm to the victim or to the victim's representative that it has received them. 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 to the victim or to the victim's representative and to the forwarding party that it has received the change of details. It should also inform the victim that the victim 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 victim coordinators advise them that they can contact victim coordinators to change their contact details. It may be appropriate to pass these details on to Police or Corrections. See Appendix 6 for an overview of this process.

Restorative practice

Section 9 of the VRA allows for restorative practice if a victim requests to meet with the offender to resolve issues relating to the offence.

Restorative practice (also referred to as restorative justice) is an emerging practice within health care. It involves 'a voluntary, relational process whereby those with a personal stake in an offence of conflict or injustice come together, in a safe and respectful environment'.¹⁷

Restorative approaches aim for a collective understanding of an adverse event, which can help clarify responsibilities, inform action, and heal individuals and relationships.¹⁸

The benefits of restorative practice to people who have suffered harm from an incident, or whose whānau member has suffered that harm, can include empowerment, strengthened relationships, healing and forgiveness.

¹⁷ Marshall CD. 2020. Restorative justice. In P Babie, R Sarre (eds), *Religion Matters* (pp 101–17). Singapore: Springer.

¹⁸ Wailling J. 2019. Blog: Using a restorative approach to respond to adverse events. Health Quality & Safety Commission. URL: www.hqsc.govt.nz/news/blog-using-a-restorative-approach-to-respond-to-adverse-events (accessed 25 April 2023).

Within a health care setting, research shows that restorative approaches create a more open and trusting culture. These approaches have also increased engagement and psychological safety, as well as reducing stress for staff.¹⁹

The Health Quality & Safety Commission has promoted restorative practices as a way of responding to adverse events in health care settings. For information and resources, see its website (www.hqsc.govt.nz). A restorative approach is likely to help services conduct a meaningful, person- and whānau-centred debrief after episodes of emergency restraint and seclusion, as required by Ngā Paerewa Health and Disability Services Standard (criteria 6.2.5 and 6.4.5).

Access to resources to help 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.victimsinfo.govt.nz), which has information to help victims understand the criminal justice system and lists 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.

Victim Support (0800 842 846) provides a free, nationwide support service for people affected by crime (www.victimsupport.org.nz).

The Victims Centre, within the Ministry of Justice, provides victims with information about victims' rights and entitlements and the criminal justice process. The Victims Centre also provides a number of resources for organisations. Victims can email victimcentre@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. See the Chief Victims Advisor's webpage on **Giving feedback or making a complaint** for more information.

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

Victim coordinators must keep records of all complaints made under the VRA and provide a report of all complaints to the Ministry of Health. To provide feedback or make a complaint relating to victims of people receiving treatment in mental health

¹⁹ Kaur M, De Boer RJ, Oates A, et al. 2019. Restorative just culture: a study of the practical and economic effects of implementing restorative justice in an NHS trust. *MATEC Web of Conferences* 273: article no. 01007.

services or care in intellectual disability services, contact the Director of Mental Health by:

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

Appendix 1: Summary of delegations

Section of the Act	Responsible for Notification	Delegation
THE CP (MIP) ACT		
Change of status under section 31(3)	Director of Mental Health	None
Change of status under section 33(3)	Director of Mental Health	None
The Mental Health Act		
Leave under section 50	Director of Mental Health	Director of Area Mental Health Services
Leave under section 52	Director of Mental Health	Director of Area Mental Health Services
Leave Under Section 31	Responsible clinician	None
Mental Health Review Tribunal hearing under section 80	Director of Mental Health	None
The IDCCR Act		
Leave under section 65	Care manager	Care managers can delegate
Leave under section 66	Director-General of Health	Compulsory care coordinators
Leave under section 67	Director-General of Health	Compulsory care coordinators

Appendix 2: Summary of delegations under the Victims' Rights Act 2002

Section of the Act	Responsible for Notification	Delegation
Special patients and patients		
Notifications under section 30A	Director-General of Health	Director of Area Mental Health Services
Victim's address to be forwarded under section 33(4)	Director-General of Health	Director of Area Mental Health Services
Notice of discharge, leave of absence, or escape or death of accused or offender who is compulsorily detained in hospital or facility under section 37	Director-General of Health	Director of Area Mental Health Services
Exception to section 37 once certain offenders no longer liable to detention for sentence imposed for offence under section 38	Director-General of Health	Director of Area Mental Health Services
Special care recipients and care recipients		
Notifications under section 30A	Director-General of Health	Compulsory care coordinators
Victim's address to be forwarded under section 33(4)	Director-General of Health	Compulsory care coordinators
Notice of discharge, leave of absence, or escape or death of accused or offender who is compulsorily detained in hospital or facility under section 37	Director-General of Health	Compulsory care coordinators
Exception to section 37 once certain offenders no longer liable to detention for sentence imposed for offence under section 38	Director-General of Health	Compulsory care coordinators

Appendix 3: 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 notifications, in practice means notifying as soon as you are able to without causing any unreasonable demands. This will depend on the nature of the event.

Compulsory care coordinator (care coordinator) 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.)

CP (MIP) Act is the Criminal Procedure (Mentally Impaired Persons) Act 2003.

Director of Area Mental Health Services (DAMHS) is responsible for administering the Victims' Rights Act 2002 within their region. See also 'victim coordinator' below.

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

Facility is a place that is used for the purpose of providing care to people 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.

Greater autonomy is defined in terms of the relative level of freedom a person gets the first time they are granted each category of leave. In some cases, the Director of Mental Health, a care manager or a care coordinator may need to approve one-off leave outside of these categories and would also be considered as granting greater autonomy.

Hospital means premises that are used to provide hospital mental health care under **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. Where only parts of any premises are used (or intended to be used) to provide hospital mental health care, 'hospital' means only those parts. At a time before 1 October 2004, 'hospital' includes premises licensed or deemed to be licensed as a psychiatric hospital under Part 5 of the Hospitals Act 1957. (As defined in **section 2** of the Mental Health (Compulsory Assessment and Treatment) Act 1992.) **Note:** For notifications of

unescorted leave under section 37(2)(b), 'hospital' includes the land on which the hospital is situated.

IDCCR Act is the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

Mental Health Act is the Mental Health (Compulsory Assessment and Treatment) Act 1992.

Reasonable prior notice, in relation to giving notifications, in practice means notifying the victim at a time before the event occurs that is based on good judgement or being fair and practical.

Secure facility is a facility (see 'facility' above) with particular features that are designed to prevent people who are 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.) **Note:** For notifications of unescorted leave under section 37(2)(b), 'facility' includes the land on which the secure facility is situated.

Short-term leave under section 52 of the Mental Health Act means leave from the hospital or facility grounds as defined by the service responsible for that hospital or facility.

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 in the definitions above, that resulted in a person dying or becoming seriously injured or incapable. Alternatively, it may be another kind of offence that has led the victim to have ongoing fear, on 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 29** of the Victims' Rights Act 2002.)

Unescorted leave from the hospital or facility means leave from the hospital or facility grounds as defined by the service 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.)

Victim coordinator is responsible for administering the victim notification system on behalf of the DAMHS and for carrying out the notifications specified in the VRA. The victim coordinator ensures that all notifications comply with the VRA, while the DAMHS authorises VRA notifications.

Victim of a specified offence means a victim of an offence that the New Zealand Police has determined is a specified offence (see definition of 'specified offence' above).

VRA is the Victims' Rights Act 2002.

Appendix 4: Examples of notifiable discharges

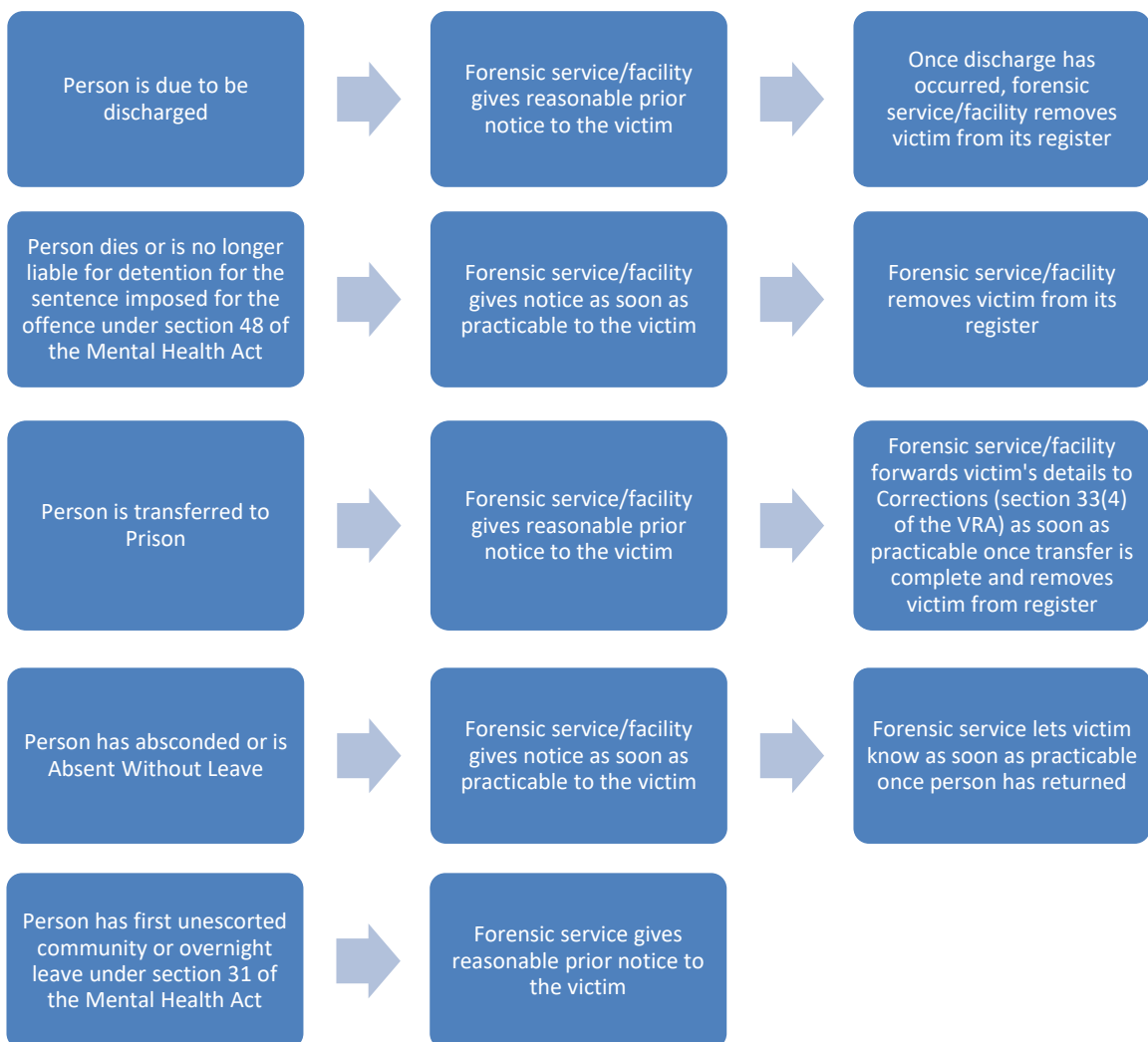
The following are some examples of discharges that should be notified to victims.

- A special patient or special care recipient who is subject to section 24(2) of the CP (MIP) Act is no longer unfit to stand trial. The Attorney-General directs that they are to be brought before the appropriate court or 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 CP (MIP) Act is still unfit to stand trial. However, the Minister of Health directs that they are to be held as a patient or as a care recipient because, 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. The Attorney-General directs that the person be held as a patient (section 31(4) of the CP (MIP) Act).
- A special patient or special care recipient is subject to section 24(2)(a) of the CP (MIP) Act, after being acquitted on account of insanity. The Minister of Health directs that they are to be held as a patient subject to a compulsory treatment order under the Mental Health Act or to be discharged (section 33(3)(b) of the CP (MIP) Act).
- A special patient detained in hospital in connection with the offence transfers to prison under section 47(1) of the Mental Health Act.
- A special patient or a special care recipient becomes no longer liable to detention for a sentence imposed. This applies under section 48 of the Mental Health Act for the special patient and under section 69 for the special care recipient.
- A patient who is subject to court orders made under section 25(1)(a), 25(1)(b) or 34(1)(b) of the CP (MIP) Act is no longer subject to treatment as an inpatient or care recipient.

There may be other instances where the VRA requires the victim to receive a notification of the discharge or change of status of a patient or care recipient. When determining whether a particular discharge is subject to the provisions of the VRA, DAMHS and victim coordinators should consider Part 3 of the VRA and the requirements of section 38 of the VRA.

Appendix 5: Overview of responsibilities under sections 37 and 38 of the VRA

Figure 10: Health notifications under sections 37 and 38 of the VRA



Appendix 6: Overview of responsibilities under section 33A of the VRA

Figure 11: Obligations in receiving and forwarding information about a change in contact address of the victim or victim’s representative under section 33 of the VRA

