



Victims' Rights in the Health System

Your rights as a registered victim of a
person detained in hospital for
mental health treatment

2022

Citation: 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.

Published in December 2022 by the Ministry of Health
PO Box 5013, Wellington 6140, New Zealand

ISBN 978-1-991075-04-8 (online)
HP 8660



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Abbreviations

CP MIP Act	Criminal Procedure (Mentally Impaired Persons) Act 2003
DAMHS	Director of Area Mental Health Services
Director	Director of Mental Health
Long-term leave	Leave under section 50 of the Mental Health Act
Mental Health Act	Mental Health (Compulsory Assessment and Treatment) Act 1992
Minister	Minister of Health
Police	New Zealand Police
Rights for Victims Act	Rights for Victims of Insane Offenders Act 2021
Short-term leave	Leave under section 52 of the Mental Health Act
The Tribunal	The Mental Health Review Tribunal
Victims' Rights Act	Victims' Rights Act 2002

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Purpose of this guide

This guide is for victims of offenders in the health system. Its purpose is to provide victims with information about their rights, their eligibility to access information and how they can have a voice in the forensic mental health system.

It includes information about the support that is available to victims and about how to provide feedback or make a complaint.

This guide covers what processes the forensic mental health system follows to help victims understand how it will keep them safe and listen to their concerns.

For definitions of terms that are not familiar to you, see the glossary at the end of this guide.

This guide mainly focuses on victims of special patients.

Where to get support

Manaaki Tāngata Victim Support offers a full 24/7 support service for victims. Its service is free, personal, confidential and available throughout Aotearoa New Zealand.

A support worker can:

- listen to, talk with and support you
- help you understand your rights and make informed choices
- give you information and help answer your questions
- help you prepare submissions before responsible authorities make certain decisions about the person who offended against you.

You can call **0800 842 846** to be connected to a support worker or visit Victim Support's website victimsupport.org.nz for more information and helpful resources.

If English is your second language, Victim Support can use Ezispeak to connect with an interpreter over the phone. It will also try to match you with a support worker who speaks your language.

If you need help with grief or trauma, please go to: **Coping with grief and trauma.**¹

You can also get support on the Victims Information website victimsinfo.govt.nz or by calling the Victims Information Line on **0800 650 654**.

Who to contact if you have a question

If you have any questions about the victim notification process, you (or your representative) can contact your victim coordinator. You will find the contact details for the victim coordinator in the first contact letter you get from the mental health service or at the webpage below.

Visit www.health.govt.nz/victimsrights for:

- details on how to apply to be a registered victim
- contact details of victim coordinators
- information about the treatment of special patients, victims' rights and support for victims.

¹ victimsupport.org.nz/practical-information/coping-grief-and-trauma

How to provide feedback or make a complaint

If you think a mental health service has failed to meet your rights or has not given you the standard of service you expect, you can contact your victim coordinator or the Director of Area Mental Health Services of the hospital you are dealing with. You can find their contact details on the Ministry of Health's webpage on **Victims' Rights**.²

You can also contact the Victims Information Line on **0800 650 654**. The Information Line staff will give you information about your rights, how to make a complaint and who to send it to.

You can also contact the Director of Mental Health by:

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

If you are not satisfied with the response you have received or the way your complaint has been looked at, or you have been waiting too long for a response, you can contact:

- Office of the Ombudsman
0800 802 602
ombudsman.parliament.nz
- Independent Police Conduct Authority (if the complaint involves the New Zealand Police)
0800 503 728
ipca.govt.nz
- Privacy Commissioner (if you think someone has breached your privacy)
0800 803 909
privacy.org.nz/your-privacy/how-to-complain

If you would like any help with making a complaint, please contact the Victims Information Line on **0800 650 654** or Manaaki Tāngata Victim Support on **0800 842 846**.

² health.govt.nz/our-work/mental-health-and-addiction/mental-health-legislation/victims-rights

Part 1. Introduction

Note on the term 'victim'

We appreciate that some people may not like the term 'victim' as it may stigmatise people and cause others to treat them differently. A preferred term may be 'survivor'.

However, the term 'victim' has a specific legal meaning and is linked with specific rights. For this reason, we have continued to use this term throughout this guideline.

Victims' rights

The Victims' Rights Act 2002 (Victims' Rights Act) is a New Zealand law that details specific rights for victims of offences. This Act aims to strengthen the rights of victims, including by allowing victims of certain offences to receive notifications about the person accused or the offender.

The Rights for Victims of Insane Offenders Act 2021 (Rights for Victims Act) came into effect on 14 December 2022. The Rights for Victims Act aims to give the victims of offenders detained in hospital for mental health treatment rights and protections comparable to the rights and protections for victims of other criminal offenders. The Act does this by increasing the number of notifications that victims have the right to receive and giving victims the right to make a submission before responsible authorities make certain decisions about the person who offended against them. The Rights for Victims Act has amended the wording of the insanity verdict from 'not guilty by reason of insanity' to 'act proven but not criminally responsible on account of insanity'.

Defining a victim

The Victims' Rights Act describes a victim generally as anyone who:

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

In the Victims' Rights Act, a victim can also be:

- a parent or legal guardian of a victim who is a child or young person
- the immediate family or whānau members of someone who dies or is left incapable because of an offence someone committed.

The principles of treatment and access to services 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 who suffers any form of emotional harm as a result of an offence, as long as the parent or legal guardian has not been charged with that offence
- a person who has experienced domestic violence
- a child or young person who is living with a person who has experienced domestic violence.

Victims Code

The Victims Code sets out how people can expect to be treated when they're a victim of crime in Aotearoa. It sets out the principles and entitlements in the Victims' Rights Act 2002. The Minister of Justice approved the Victims Code, which was published in September 2015.

The Victims Code has 3 parts:

- Part 1: How providers are expected to treat victims
- Part 2: Victims' rights in the criminal justice and youth justice systems
- Part 3: What can I do if I think my rights are not being met?

You can access the Victims Code at: <https://victimsinfo.govt.nz/assets/Victims-code/Victims-Code.pdf>.

Offenders in the health system

A small subset of offenders and alleged offenders need to be assessed or treated for their mental health needs in a hospital. This happens under the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CP MIP Act). These people receive compulsory treatment under the Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Mental Health Act) as either a patient or a special patient.

Special patients are a specific category of patient who are under additional restrictions and have intensive support from expert clinicians.

What you can expect from services that are working alongside you

In line with Part 1 of the Victims Code, you can expect that health services and staff will work alongside you in a way that:

- puts your safety first

- respects your cultural, religious, ethnic and social needs, values and beliefs
- treats you with dignity and protects your privacy
- treats you fairly
- allows you to make informed choices
- is of high quality
- is open, honest and effective
- allows you to provide feedback.

The health and disability system in Aotearoa must meet the obligations under Te Tiriti o Waitangi (the Treaty of Waitangi). This means you have rights to the principles of:

- **tino rangatiratanga**, which guarantees Māori self-determination and mana motuhake
- **equity**, which requires services to commit to achieving equitable health outcomes for Māori
- **active protection**, which requires services to act, to the fullest extent practicable, to achieve equitable health outcomes for Māori
- **options**, which requires services to be provided in a culturally appropriate way
- **partnership**, which requires services to work in partnership with Māori in the governance, design, delivery and monitoring of health and disability services.

Your rights to information

If you are the registered victim of a person who is detained in hospital for assessment or treatment of their mental health needs, you have the right to be told if, and when, certain events happen for that person. Please see Part 2 for the kinds of information you have the right to receive.

As the victim of a special patient, you also have the right to make submissions to the responsible authorities before they make certain decisions about that person. Please see Part 3 for information about providing a submission.

Part 2. Receiving information

How to register to receive notifications and be kept informed of decisions

If you are a victim of a crime, you may be able to register to receive notifications. When you register, you get information about the person who offended against you at specific points along their justice or rehabilitation pathway.

New Zealand Police (the Police) assess whether a victim is eligible to receive notifications after someone has committed an offence against them. Several agencies can help you apply to register, including the Police, the Department of Corrections and Court Victim Advisors. For more information about how to apply to the Victim Notification Register, go to the Police website: [police.govt.nz/advice-services/advice-victims/information-victims-crime](https://www.police.govt.nz/advice-services/advice-victims/information-victims-crime) or the Department of Corrections website: [corrections.govt.nz/information_for_victims/victim_notification_register](https://www.corrections.govt.nz/information_for_victims/victim_notification_register)

For more information about registering for notifications and the support available to victims, visit the Victims Information website [victimsinfo.govt.nz](https://www.victimsinfo.govt.nz) or call freephone **0800 650 654**. You can also contact Victim Support on **0800 042 846** or visit its website [victimsupport.org.nz](https://www.victimsupport.org.nz)

Nominating a representative

A victim can choose to nominate a representative to receive information on their behalf. If you choose a representative, they will receive the information instead of you, but they have to agree to pass it on to you. Some people choose to have a representative so that they will always hear the information when they are in a safe environment, and they have family or whānau with them.

Contact from mental health services

If a victim coordinator contacts you, it means the person who offended against you has been detained in a hospital for mental health assessment or treatment. The Police or Department of Corrections has passed your contact details to the victim coordinator for the hospital.

This booklet is for you. It gives you details on the notifications you get about events related to the treatment and rehabilitation of the person who offended against you. It also contains information on the events that you will be notified about and invited to make a submission on. You may also get information from other agencies such as the New Zealand Police, New Zealand Parole Board or Department of Corrections.

When you will receive notifications

Once the relevant health service has received your information, the Director of Area Mental Health Services (DAMHS) will notify you (or your representative) that the person who offended against you has been made a special patient, or a patient, and detained in hospital for compulsory mental health assessment and treatment. The DAMHS will also explain what that person's legal status means and tell you about all the future notifications that you are eligible to receive. They usually contact you 1 to 3 working days after the victim coordinator receives your information.

Notifications and submissions about special patients

Special patients are a category of patient who forensic mental health services treat under the Mental Health (Compulsory Assessment and Treatment) Act 1992³.

You will get notifications about several types of events for as long as the person remains a special patient. You will also be invited to make written submissions before the responsible authority makes certain decisions about the person. For the timeframes for making a submission, see Part 3.

The events you may receive a notification or invitation to make a submission on relate to applications for the person to have:

- their first staff-escorted leave from hospital
- their first staff-escorted leave from hospital (unescorted at destination)
- their first unescorted leave from hospital
- their first overnight leave from hospital of up to 3 days
- their first overnight leave from hospital of up to 7 days
- long leave from hospital (6 or 12 months)
- a change of legal status, when the Minister of Health (the Minister) is required to make a decision
- a Mental Health Review Tribunal hearing.

Once the responsible authority has made a decision about each of these applications, you will be notified of this decision. For any leave application that the authority approves, you will also be told any conditions of the approval. The Privacy Act 2020 prevents anyone from sharing any more information about the care and treatment of a special patient with you.

³ See part 4 for more information on special patients.

For more information about these applications and how you can be involved, see the following parts of this booklet.

You will also be told if:

- the special patient dies (usually you will receive this information within 2 working days of the event)
- the special patient's sentence ends (usually within 3 working days of the event)
- the special patient absconds or is absent without official leave (usually within 24 hours of the event).⁴

Notifications about patients

Sometimes a judge may order a person involved with an offence to be detained to receive treatment as an ordinary patient under the Mental Health Act⁵.

If you are the registered victim of an (ordinary) patient, you will receive information about several different types of events for as long as the person is detained in hospital for the offence. The notification will tell you, a reasonable time before it happens, if the person is going to be:

- granted their first period of unescorted leave from the hospital grounds
- granted their first period of unescorted overnight leave from hospital
- discharged from hospital.

Please note that no legal provisions allow victims to make a submission on the decision to approve a patient leave from hospital. This is because the processes for patients are different to the processes for special patients. For patients, the responsible clinician makes decisions about leave from hospital and discharge from inpatient status. However, they will still consider the safety of victims when deciding whether to approve a patient's leave from hospital.

You will also be told if:

- the patient dies (usually you will receive this information within 2 working days of the event)
- the patient's sentence ends (usually within 3 working days of the event)
- the patient absconds or is absent without official leave (immediately, or usually within 24 hours of the event).⁶

The Privacy Act 2020 prevents anyone from sharing any more information about the care and treatment of a patient with you.

⁴ Please know that it is rare for a special patient to leave hospital without the correct approvals or fail to return from leave. If either of these rare events happens, you will also be told when the special patient has returned.

⁵ See part 4 for more information on patients.

⁶ Please know that it is rare for a patient to leave hospital without the correct approvals or fail to return from leave. If either of these rare events happens, you will also be told when the patient has returned.

How you will receive notifications

You or your representative can receive the above information in many different ways, such as by registered letter, email, phone call or text message. Please tell your victim coordinator how you prefer to receive information.

How to stop receiving notifications

We acknowledge that receiving notifications can be distressing. If you no longer want to receive the information described above (or if you want a representative to receive the information instead of you), contact the victim coordinator at the hospital. They will remove your details from their records.

If you change your mind, and would like to receive notifications again, please contact your victim coordinator. For their contact details, see: [health.govt.nz/our-work/mental-health-and-addiction/mental-health-legislation/victims-rights](https://www.health.govt.nz/our-work/mental-health-and-addiction/mental-health-legislation/victims-rights)

How to change your contact details

If your address, phone number, email address or any other contact details change, tell your victim coordinator. They will update your records. It is important to keep your details up to date so that you receive notifications as quickly as possible.

Your victim coordinator's contact details will be on the first letter you get from the mental health service. Contact details of all victim coordinators are also available at [health.govt.nz/victimsrights](https://www.health.govt.nz/victimsrights)

You can also email victiminformation@police.govt.nz to change your contact details. They will pass on your updated contact details to your victim coordinator.

Privacy Act 2020

Specific information about a person in health care, such as details about their treatment or progress, is confidential health information. The Privacy Act 2020 and the Health Information Privacy Code 2020 protect this information. No one can give you (or your representative) this information without the person's permission, except in certain limited situations where the law allows.

Part 3. Providing a written submission

Your right to receive notifications and put your views forward

You, or your representative, will receive a letter from either the regional DAMHS or the Director of Mental Health (the Director) telling you someone has applied for a category of leave, a change of legal status or a Mental Health Review Tribunal hearing for the person who offended against you. The letter will explain the process of the application and invite you to make a written submission on whether you think the responsible authority should approve or support the application. The letter will also tell you where you can get support to complete your submission.

Table 1 outlines the applications you can make a submission on, who will invite you to make it and how long you have to make it.

Table 1: Decisions about a special patient that, as a registered victim, you will be notified about and invited to make a submission on

Subject of application		Who will invite you to make a submission	How long you have to make a submission
Short-term leave	Staff-escorted leave	DAMHS	14 days
	Staff-escorted leave (unescorted at destination)	DAMHS	14 days
	Unescorted leave	DAMHS	14 days
	Overnight leave from hospital (up to 3 days)	DAMHS	14 days
	Overnight (up to 7 days)	DAMHS	14 days
Long leave (6 or 12 months)		DAMHS	14 days
A change of legal status		Director	14 days
A Mental Health Review Tribunal hearing		DAMHS	10 days

Note: DAMHS = Director of Area Mental Health Services; Director = Director of Mental Health.

For more information about what these applications mean, the process involved in approving them and how you can participate, see Parts 5, 6 and 7.

What making a submission involves

Making a submission means having your say, putting your views forward and saying how you feel about what is being proposed. Then the responsible authority will consider your views before making a decision.

What to include in a submission

You must make a submission in writing (typed or handwritten). You can send your submission to the postal or email address on your notification letter. Your submission is an opportunity for you to give your opinion, which may include any concerns you have about the risk the special patient presents to your safety or security (physical, emotional or mental), or the safety or security of your immediate family or whānau.

For example, you may want to raise concern about a special patient having leave, or living, in an area that is close to your home or places that you frequently visit. It may also be reasonable to raise concern about a special patient attending the same event or gathering as you.

You can include any information in your submission that you think would be relevant for the Director when they are considering whether to approve or support a leave or change of status application, or for the Mental Health Review Tribunal when it is reviewing a special patient's condition. Examples of useful information are the area where you are living, your workplace or recreational places that you frequently visit.

It may be difficult to put your thoughts and concerns into words. If you would like to, use the submission form designed to help you to write your submission. Every letter you receive inviting you to make a submission includes this submission form. You can also find it at health.govt.nz/our-work/mental-health-and-addiction/mental-health-legislation/victims-rights. If you don't want to use this form, you do not have to. Please feel free to make your submission in writing in any way you choose.

Who will read your submission

Leave and change of status applications

If your submission is about an application for leave or a change of legal status, the Director and DAMHS will read it.

The DAMHS may discuss parts of your submission with the people who are in charge of the treatment of the special patient who offended against you. They do this so that the service can change the risk management plan or leave conditions as needed to address the concerns that you raise.

The Director may also summarise part of your submission in their report to the Minister of Health to inform the Minister's decision-making.

Please know that the people who read your submission **will not** share it with the special patient who has offended against you. Your submission will be held in a secure database, that only the Director, the regional DAMHS and the victim coordinator have access to. It may be necessary for them to discuss aspects of your submissions with the special patient's treating team. However, they will not share your personal details, such as your name and address.

Mental Health Review Tribunal applications

When you are making a submission on a Mental Health Review Tribunal hearing, the members of the Tribunal will read your submission. Please know that the special patient may also read your full submission, or parts of it. However, they will not get your contact details and address.

What happens after you make your submission

After you make your submission, you will receive confirmation that it has been received.

When your application goes to the Director to contribute to their decision about whether to approve an application for short-term leave or to support an application for long-term leave or change of legal status, the Director will meaningfully consider the concerns you raise in your submission. Similarly, the Mental Health Review Tribunal will meaningfully consider the concerns in your submission when it is reviewing the special patient's condition.

The Director will expect and/or ask the special patient's treating team to make any changes to the risk management plan that are needed to manage the concerns of victims. Changes may include preventing the special patient from visiting specific areas of a city or particular recreational places.

After you have made your submission and got confirmation that it has been received, you will only get a response after the responsible authority has made a decision.

If the responsible authority declines an application for leave or change of legal status, the special patient's treating team may put forward another application in the future. If this happens, you will receive another notification and invitation to make another submission.

Support with a submission

If you would like help writing your submission, please contact Manaaki Tāngata Victim Support. You can contact them 24/7 on **0800 842 846**. For other contact details, go to victimsupport.org.nz

Part 4. Detention in hospital for mental health treatment

Special patients

Special patients are a category of patient who forensic mental health services treat under the Mental Health (Compulsory Assessment and Treatment) Act 1992.

Most people who commit an offence and experience a mental illness are not detained in hospital for mental health assessment or treatment. But some people are, for several reasons. Under the Criminal Procedure (Mentally Impaired Persons) Act 2003, a judge may order that:

- a person on remand must go to a hospital for psychiatric assessment of mental disorder
- someone who is found unfit to stand trial or not guilty of a crime due to insanity must be detained in hospital as a special patient for treatment under the Mental Health Act
- a person must be detained in hospital for treatment under the Mental Health Act after they are found guilty of a crime.

To find out more about why people are detained in hospital for mental health care, go to: **Special Patients and Restricted Patients: Guidelines for Regional Forensic Mental Health Services.**⁷

For information on the number of special patients in Aotearoa for any given year, see the **Office of the Director of Mental Health and Addiction Services Regulatory Report** for that year.⁸ This data is published on an annual basis, for the previous year (i.e. the data for 2020 was published in 2021).

⁷ Ministry of Health. 2022. *Special Patients and Restricted Patients: Guidelines for Regional Forensic Mental Health Services*. Wellington: Ministry of Health. URL: health.govt.nz/publication/special-patients-and-restricted-patients-guidelines-regional-forensic-mental-health-services (accessed 19 December 2022).

⁸ You can also search for these reports on the Manatū Hauora website under 'mental health annual reports' or go to health.govt.nz/about-ministry/corporate-publications/mental-health-annual-reports

Patients

Sometimes a judge may order a person involved with an offence to be detained to receive treatment as an ordinary patient under the Mental Health Act. For more information about the treatment of ordinary patients, see the **Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992**.⁹

This booklet mainly focuses on special patients.

Transferring people from prison to hospital

Prisoners who experience mental illness can receive mental health treatment in prison from health practitioners who work there. But in rare cases, some prisoners (less than 1% of the prison population) need mental health care in a hospital. These prisoners can be transferred to a hospital and made a special patient.

They will only return to prison once their condition has improved and health practitioners in prison can manage it.

A judge can also order a person to undergo assessment or treatment in forensic mental health services before sentencing or as part of their sentence.

Forensic mental health services

Forensic mental health services care for and treat special patients. The 5 regional forensic mental health services across Aotearoa are:

- Auckland Regional Forensic Mental Health Service
- Puawai Midland Regional Forensic Mental Health Service
- Te Korowai Whariki Central Regional Forensic Mental Health Service
- Canterbury Regional Forensic Mental Health Service
- Southern Regional Forensic Mental Health Service.

Forensic mental health services develop plans to gradually settle special patients back into the community as their mental health improves and their risk to others decreases. The services work in a variety of buildings, ranging from locked inpatient wards to unlocked wards and supported accommodation. When a person first becomes a special patient, they will be placed in a locked inpatient ward. As their mental health improves, they will progress to less secure settings.

⁹ Ministry of Health. 2022. *Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992*. Wellington: Ministry of Health. URL: health.govt.nz/publication/guidelines-mental-health-compulsory-assessment-and-treatment-act-1992 (accessed 19 December 2022).

Treating mental illness can be an important step towards helping someone to address the reasons for their offending. In doing so, they can reduce their chances of offending in the future and significantly improve their wellbeing. Evidence for these benefits comes from a study in Aotearoa,¹⁰ which looked at people found not guilty due to insanity over a 30-year period. It found only 6% of those people were reconvicted for violent offences within 2 years after they were discharged.

Managing special patients

The law requires forensic mental health services, when managing a special patient, to balance the special patient's rights under the Mental Health Act and their needs for treatment and rehabilitation against the safety of the public and the concerns of victims.

A responsible clinician is in charge of looking after a special patient. They have support from other mental health clinicians, who help to regularly review the condition and progress of special patients.

¹⁰ Skipworth J, Brinded P, Chaplow D, et al. 2006. Insanity acquittee outcomes in New Zealand. *Australian and New Zealand Journal of Psychiatry* 40(11): 1003–9. DOI: 10.1111/j.1440-1614.2006.01924.x (accessed 19 December 2022).

Part 5. Leave from hospital for special patients

Special patients who can get leave from hospital

Most special patients can get leave from hospital. It is an important part of their rehabilitation. The type of leave a special patient can get and how long their leave is will depend on their legal status, how far they have come along their justice or rehabilitation pathway, their risk to the public and the safety concerns of a victim.

A person cannot get leave outside the hospital grounds, except in a medical emergency, if they are:

- detained before a decision on criminal charges has been made
- waiting for sentencing or appeal.

Leave is a careful, step-by-step process

Leave occurs carefully, step by step, as the special patient's mental health improves and their risk to the public decreases. The leave approval process is designed to identify, consider and manage risks. No person will be granted leave unless clinicians have completed a comprehensive risk management assessment and decide that the risks associated with approving the leave are low.

Special patients usually begin by having walks on the hospital grounds with forensic service staff escorting them. If appropriate, special patients progress to unescorted ground leave and then to escorted and unescorted community leave.

Clinicians carefully consider any decision to apply for a special patient to have leave beyond the hospital grounds. In general, they gradually decrease the level of staff supervision and increase the time the special patient can be away from the hospital. Clinicians make these decisions in line with the special patient's rehabilitation plan that the clinicians responsible for their care have developed. In any leave decisions, decision-makers consider the special patient's mental state at the time of the leave, how well their recovery is progressing and the concerns of any victim.

Most special patients use community leave to go to appointments, get hospital medical treatment, work, study, go to rehabilitation programmes or visit family. After a special patient has had successful unescorted leave for increasingly longer periods, it may be appropriate to progress to a less secure hospital setting as well.

It is important to note that not all special patients are eligible for leave. Even if they can get leave, there is no requirement that they progress towards less secure conditions if a risk assessment or their stage of recovery does not support this. Clinicians must make any decisions about leave applications with safety for the individual and the community, and the concerns of victims in mind.

Approval processes for leave vary depending on the person’s legal status and how much progress they have made in their recovery. The people involved in the decisions for the approval process depend on the type of leave being applied for. Table 2 details who is responsible for approving the different types of leave.

Table 2: Type of leave and decision-maker

Type of leave	Decision-maker
Access to hospital grounds	Director of Area Mental Health Services (DAMHS)
Short-term leave (up to 7 days)	Director of Mental Health (the Director)
Long leave (6 or 12 months)	Minister of Health (the Minister)

For more detailed information on leave processes, please refer to Part 4 of the **Special Patients and Restricted Patients: Guidelines for Regional Forensic Mental Health Services 2022**.¹¹

Access to hospital grounds

When a special patient’s responsible clinician requests the special patient have access to the hospital grounds for the first few times, the DAMHS decides whether to approve it. If the DAMHS approves this leave, staff from the forensic mental health service will accompany the special patient on all leave in the hospital grounds. Please know that there is no requirement to notify victims about or invite them to make a submission on escorted or unescorted access to hospital grounds.

Short-term leave from hospital

The Director, in the Ministry of Health, is responsible for approving short periods of leave (short-term leave). Short-term leave can be up to 7 days outside the hospital grounds.

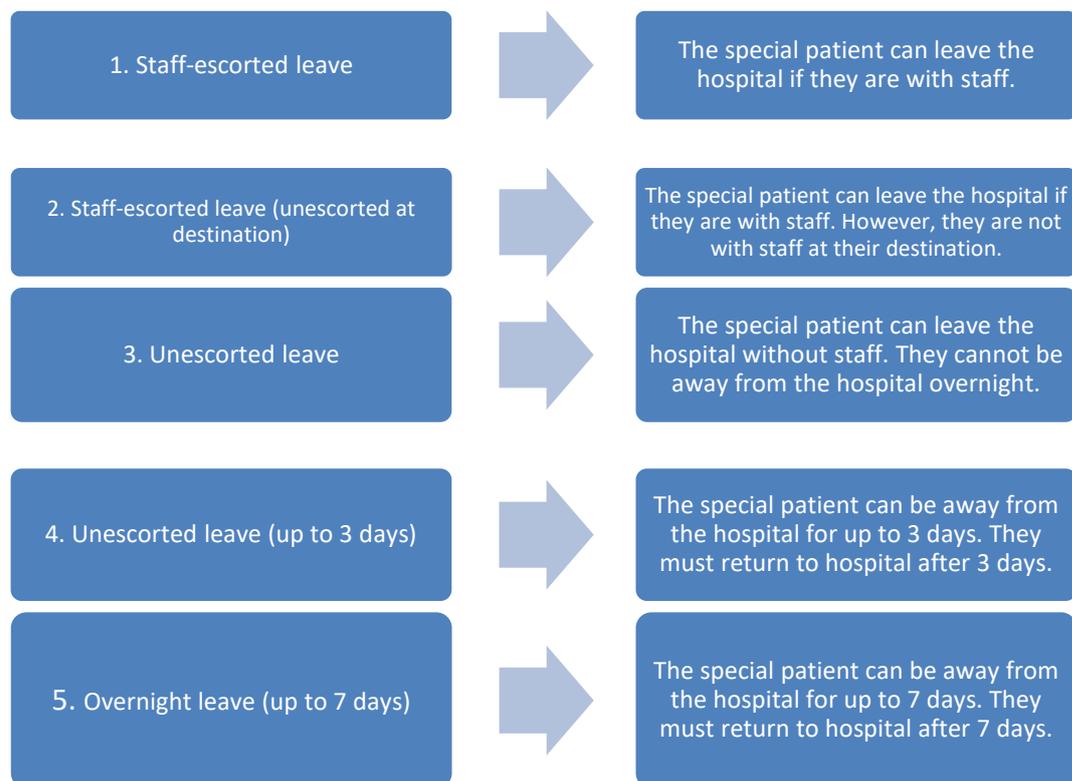
¹¹ Ministry of Health. 2022. *Special Patients and Restricted Patients: Guidelines for Regional Forensic Mental Health Services*. Wellington: Ministry of Health. URL: health.govt.nz/publication/special-patients-and-restricted-patients-guidelines-regional-forensic-mental-health-services (accessed 19 December 2022).

There are 5 stages of short-term leave that the Director can approve. Figure 1 gives details of each stage.

It is important for you to know that you will only receive a notification of a short-term leave application and be invited to make a submission on it if that leave will give the special patient greater independence outside the hospital than any other leave application previously approved. This means that you will receive a notification and invitation to make a submission the first time an application is made for each stage of short-term leave. If the application for short-term leave is declined, you will be notified and invited to make a submission when an application for that category of short-term leave is made again.

Note that a special patient may not need to take each stage of leave consecutively. Different special patients will also progress through these stages at different rates.

Figure 1: Stages of short-term leave outside the hospital grounds



Approval process for short-term leave

Special patients can get approval for short-term leave from hospital under section 52 of the Mental Health Act. As a registered victim, or representative, you will receive notification of these leave applications and an invitation to make a submission on whether they should be approved.

When a special patient is ready for a stage of short-term leave, the DAMHS will notify you, or your representative, that an application for this leave is being made. They will explain the process of approving short-term leave and invite you to make a submission, within 14 days of receiving the notification, on whether the application should be approved.

Once the DAMHS has received your submission, they will consider it. The DAMHS will then send the leave application, your submission and their comments on how they are addressing your concerns to the Director of Mental Health.

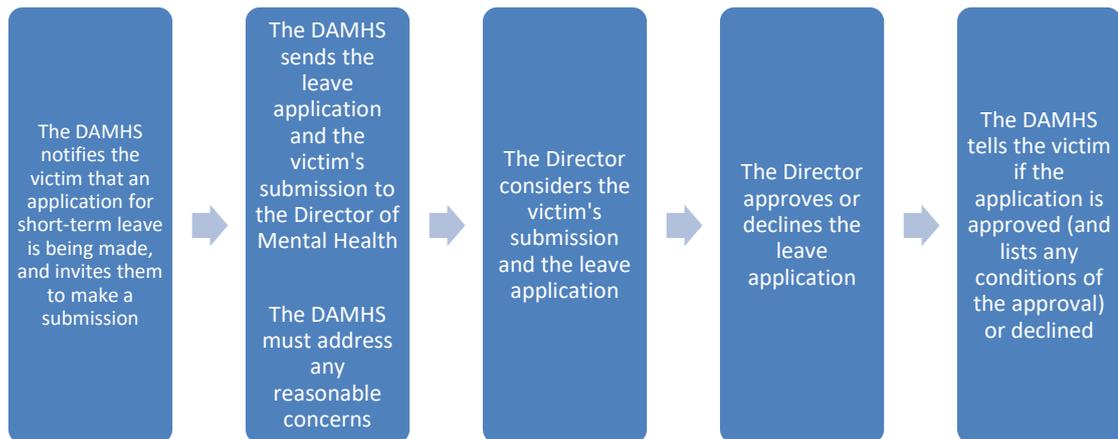
The Director will then consider the leave application and your submission, and approve or decline the application. If they approve the application, the Director will decide on what conditions to place on the approval. One condition may be to prevent a special patient from visiting a specific place or recreational area.

Before approving the leave application, the Director must be satisfied that the conditions of leave are appropriate and the special patient's mental health is stable. They must also be satisfied that the process has considered all the concerns any victim has raised and is managing the risks appropriately.

After the Director has made a decision, the DAMHS will notify you that the application has been approved or declined. If the application is approved, you will be told any conditions of the approval. The Privacy Act 2020 prevents the DAMHS from giving you any further information about the special patient's care and treatment.

The Director usually makes decisions about short-term leave within 3 weeks. Figure 2 summarises the process for approving short-term leave.

Figure 2: Approval process for short-term leave



Urgent leave

A special patient may also use short-term leave to access urgent medical care. Please know that for urgent short-term leave applications, the Director must make a decision immediately.

If you have provided a submission in advance about the special patient accessing leave, the Director will consider your concerns.

If approving the urgent short-term leave application would give the special patient greater independence outside the hospital than any other leave application previously approved, you will receive notification of the approval and information about the conditions of the approval.

Long leave from hospital

The Minister is responsible for approving applications for leave that are longer than 7 days. As part of this process, the Director must advise the Minister on whether they support the leave application. The first time a special patient gets approved long leave, it is usually for a period of 6 months. Later applications for long leave are usually for periods of 12 months. You will be notified about these leave applications and invited to make submissions on whether the Minister should approve them.

When they have long leave from hospital, special patients can live full time in the community, while staying under the close supervision of their clinical team. Such leave occurs carefully and with a strong risk management plan in place.

Approval process for long leave

Special patients can be approved long leave from hospital under section 50 of the Mental Health Act. As a registered victim, or representative, you will be notified about these leave applications and invited to make a submission on whether the Minister should approve them.

When clinicians consider a special patient is ready for long leave from hospital, the DAMHS will notify you, or your representative, that an application is being made. They will explain the process of approving long leave and invite you to make a submission, within 14 days of you receiving the notification, on whether the Director should support the application.

Once the DAMHS has received your submission, they will consider it. The DAMHS will then send the leave application, your submission and their comments on how they are addressing your concerns to the Director.

The Director will consider the leave application and your submission. The Director will then advise the Minister on whether they support the leave application. Before deciding to support the leave application, the Director must be satisfied that the conditions of leave are appropriate and the special patient's mental health is stable. They must also be satisfied that the process has considered all of the concerns any victim has raised and is managing the risks appropriately.

The Minister then will then approve or decline the leave application. If the Minister approves the leave application, they will decide on what conditions to place on the approval.

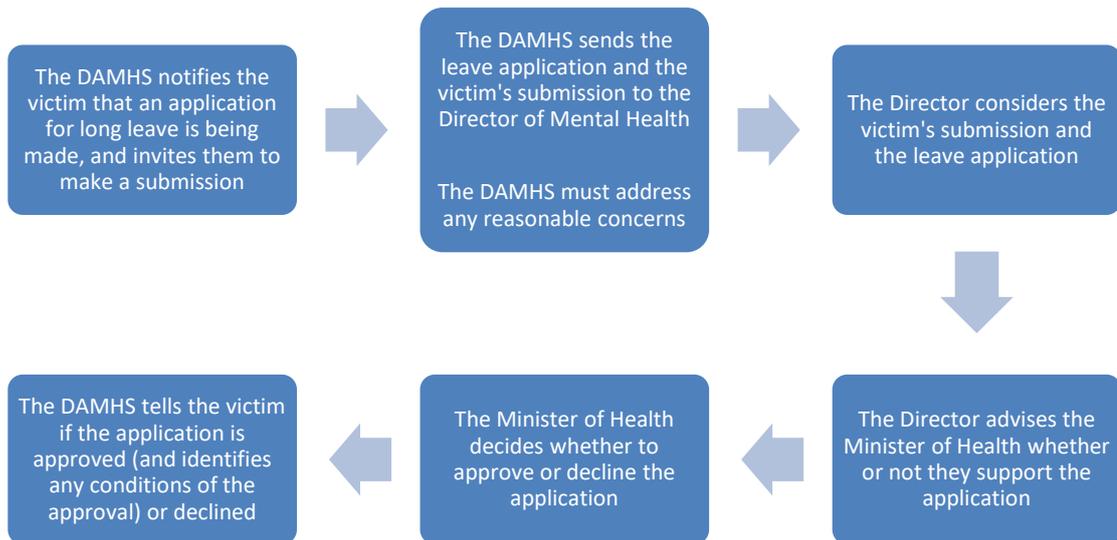
Once the Minister has made a decision, the DAMHS will notify you about the outcome of the application, which may be that:

- the Director has supported it and the Minister has approved it, or
- the Director has supported it and the Minister has declined it, or
- the Director has not supported it.

If the long leave has been approved, the DAMHS will also tell you about any conditions of the approval. The Privacy Act 2020 prevents them from giving you any further information about the special patient’s care and treatment.

Decisions about long leave are usually made within 8 weeks. Figure 3 summarises this approval process.

Figure 3: Approval process for long leave



Cancelling leave

When a special patient gets approval for short-term leave or long leave, they must follow the leave conditions. If they fail to follow their leave conditions, or their mental state becomes unstable, their leave may be cancelled.

If this happens while the special patient is on long leave, the Director may recommend that the Minister cancels the leave so the special patient can return to hospital for care and treatment. For more information on what this means, please refer to **Special Patients and Restricted Patients: Guidelines for Regional Forensic Mental Health Services**.¹²

If leave is cancelled, the Privacy Act 2020 prevents the DAMHS from sharing this information with you, as it is seen as clinical information.

¹² Ministry of Health. 2022. *Special Patients and Restricted Patients: Guidelines for Regional Forensic Mental Health Services*. Wellington: Ministry of Health. URL: health.govt.nz/publication/special-patients-and-restricted-patients-guidelines-regional-forensic-mental-health-services (accessed 19 December 2022).

Hospital leave is different from parole

Decisions about both parole and hospital leave are based on a comprehensive process that balances the needs of the offender or special patient, the concerns and safety of registered victims and the safety of the public.

However, the processes for the 2 types of decisions differ in their purpose, length of time and conditions. Because of this, an assessment of the risks of short-term leave is fundamentally different to an assessment of the risks of parole.

An offender in prison may not be an appropriate candidate for parole but may be an appropriate candidate for short-term leave from hospital. You can find more information about parole on the Victim Support website (victimssupport.org.nz/practical-information/parole-board/parole-hearing) or on the New Zealand Parole Board's website (paroleboard.govt.nz/victims).

When a special patient or patient absconds or does not return from leave

Special patients are closely supervised and are not able to leave forensic services or travel overseas without permission. Every special patient granted unescorted leave from hospital has a border alert in place that prevents them from leaving Aotearoa without permission from the Minister of Health.

It is rare for a special patient to leave the hospital without permission. If it happens, the service follows protocols to help get the special patient back safely to hospital as soon as possible. This includes contacting the Police, Ministry of Health and registered victims.

Protocols also apply if a patient receiving treatment under the Mental Health Act leaves hospital without permission.

If you are a registered victim, you (or your representative) will get information, as soon as the victim coordinator becomes aware, if the special patient leaves hospital without the correct approvals or fails to return from leave. The victim coordinator will also tell you (or your representative) when the special patient has returned to hospital.

Usually if you are a victim with an appointed representative, the representative receives notifications. However, the victim coordinator could contact you, as a victim, directly if your offender is away from hospital without the correct approvals and the victim coordinator thinks there is a risk to your safety that can't be managed by informing your representative.

Part 6. Change of legal status for special patients

There are 2 ways in which a special patient may be considered for a change of legal status.

- Their responsible clinician completes a clinical review that states their special patient status is no longer necessary.
- The Mental Health Review Tribunal states that their special patient status is no longer necessary.

An application for a change of legal status will only be made once a special patient has demonstrated a consistently stable mental state and they are no longer a risk to other people or themselves. Usually it will also only happen after the special patient has been successfully living in the community on long leave for several years.

The process for approving a change of status is designed to identify, consider and manage risks. Several different decision-makers are involved in the process. No person will be granted a change of status unless clinicians have completed a comprehensive risk management assessment and plan. The decision-makers will also carefully consider your submission, if you choose to make one, before deciding whether to approve the change of status.

If a special patient receives a change of legal status, they will be discharged from hospital and the requirement to notify victims will no longer apply. If you receive a notification that the special patient's change of status has been approved, this will be the last health notification you receive as a registered victim.

It is important to note that mental health services will continue to support many special patients in a similar way after their legal status changes. Most will be made a patient under the Mental Health Act, meaning they will remain under a compulsory mental health treatment order until their mental health is assessed as having significantly improved over a long time. That means they continue to have follow-up support from mental health services and regular meetings with their treating team.

For more detailed information on the requirements of a change of status application, please refer to Part 8 of the **Special Patients and Restricted Patients: Guidelines for Regional Forensic Mental Health Services 2022**.¹³

¹³ Ministry of Health. 2022. *Special Patients and Restricted Patients: Guidelines for Regional Forensic Mental Health Services*. Wellington: Ministry of Health. URL: health.govt.nz/publication/special-patients-and-restricted-patients-guidelines-regional-forensic-mental-health-services (accessed 19 December 2022).

Approval process for special patients found not criminally responsible due to insanity

Special patients who have been found not criminally responsible due to insanity can receive a change of legal status under section 33(3) of the CP MIP Act. As a registered victim, or representative, you will receive a notification about this process and an invitation to make a submission on it.

If a special patient's responsible clinician or the Mental Health Review Tribunal concludes that special patient status is no longer needed, they will send an application for change of legal status to the Director.

When the Director receives the application for a change of legal status, they will notify you, or your representative, of this application. The Director will explain this process and invite you to make a submission on whether they should support the application. You will have 14 days to provide a submission.

Once the Director has received your submission, they will meaningfully consider it and how to address any concerns you raise. The Director will then report to the Minister on whether they support the application.

The Minister will then decide whether to approve or decline the change of status application. They consider the concerns of victims, the interests of the special patient and the safety of the public.

When the Minister has made a decision, the Director will notify you that:

- the Director supported a change of legal status and the Minister approved that change or
- the Director supported a change of legal status and the Minister declined that change or
- the Director did not support a change of legal status.

The Privacy Act 2020 prevents the Director from giving you any further information about the special patient's care and treatment.

Decisions about a change of status are usually made within 8 weeks. Figure 4 summarises this process. Please note that a decision may be delayed if the Director or the Minister asks for additional information.

Figure 4: Process for approving a change of legal status for special patients found not criminally responsible due to insanity



Approval process for special patients found unfit to stand trial

Special patients who received the verdict of unfit to stand trial can receive a change of legal status under section 31(3) of the CP MIP Act. As a registered victim, or representative, you will receive a notification about this process and an invitation to make a submission on it.

If a special patient's responsible clinician or the Mental Health Review Tribunal concludes that although the person remains unfit to stand trial, special patient status is no longer necessary, they will send an application for change of legal status to the Director.

When the Director receives the application, they will notify you, or your representative, that an application for a change of legal status is being made. The Director will explain this process and invite you to make a submission on whether they should support the application. You will have 14 days to provide a submission.

Once the Director has received your submission, they will consider it and how to address any concerns you raise. The Director will then report to the Minister on whether they support the application.

The Minister and the Attorney-General will then jointly decide whether to approve or decline the change of status application. In making this decision, they consider the concerns of victims, the interests of the special patient and the safety of the public.

When the decision-makers have made a decision, the Director will notify you that:

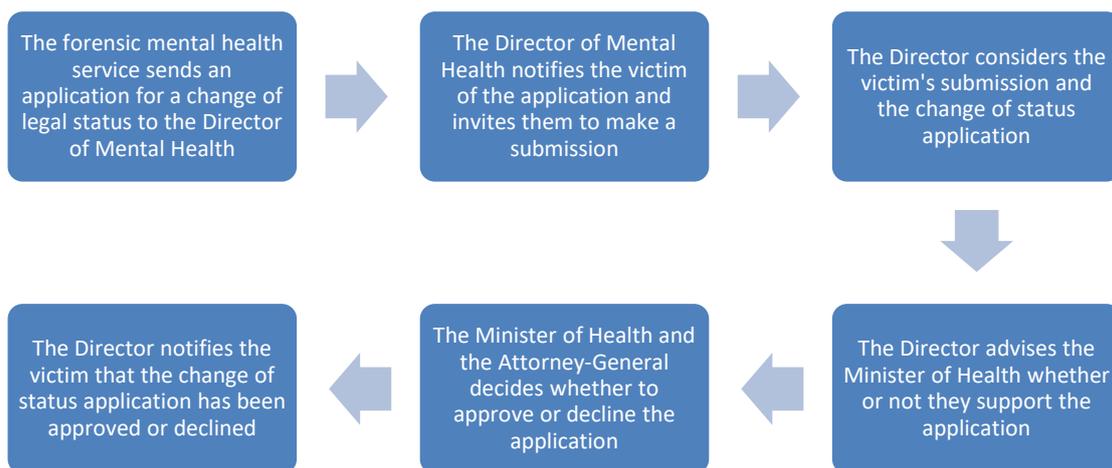
- the Director supported a change of legal status and the Minister approved it, or
- the Director supported a change of legal status and the Minister declined it, or

- the Director did not support a change of legal status and the Minister approved it, or
- the Director did not support a change of legal status and the Minister declined it.

The Privacy Act 2020 prevents the Director from giving any further information about the special patient’s care and treatment.

This decision needs to be carefully considered and can often take up to 3 months. This time is needed partly because several people are involved in the decision-making process. Also, the decision-makers need to look at a lot of information before making a decision. Figure 5 summarises this process.

Figure 5: Process for approving a change of legal status for special patients found unfit to stand trial



Part 7. The Mental Health Review Tribunal

The Mental Health Review Tribunal (the Tribunal) may also be involved in decisions about discharging special patients from hospital.

The Tribunal's role is to consider if a person still needs to be a special patient, or whether they should have a less restrictive status or be discharged from compulsory care. A special patient can apply to the Tribunal for a review of their condition at any time. There is no limit on the number of applications they can make. You will be notified each time the special patient makes an application, unless you decide to opt out of receiving notifications.

The Tribunal is made up of at least 3 people:

- a lawyer
- a psychiatrist
- a community member.

Sometimes, the Tribunal will include an additional member. Additional members are included if the Tribunal needs help from a member with special knowledge or needs a member with the same ethnic identity or gender as the special patient.

A Tribunal hearing will take place to review a special patient's mental state. At this hearing, the Tribunal usually hears from the special patient, the special patient's whānau or family, and clinicians involved in the special patient's care and treatment. The Tribunal will also consider any written submission a victim makes.

For special patients found unfit to stand trial, the Tribunal will use this evidence to decide if the person is:

- no longer unfit to stand trial, or
- still unfit to stand trial, but no longer needs to be a special patient, or
- still unfit to stand trial and should continue to be a special patient.

For special patients found not criminally responsible on account of insanity, the Tribunal will use this evidence to decide if the person:

- no longer needs to be a special patient, or
- should continue to be a special patient.

Please know that the Tribunal's decision about the condition of a special patient is only advice; it is not definite. The Minister of Health or the Attorney-General will have the final decision on whether a special patient's status should change (see Part 6).

You can find more information about the Tribunal on the Ministry of Health’s website:

- Mental Health Review Tribunal
health.govt.nz/new-zealand-health-system/key-health-sector-organisations-and-people/mental-health-review-tribunal
- Mental Health Review Tribunal resources
health.govt.nz/new-zealand-health-system/key-health-sector-organisations-and-people/mental-health-review-tribunal/mental-health-review-tribunal-resources

Process for a Tribunal hearing

If you are a registered victim, or representative, the Director will notify you that a special patient has applied to the Tribunal for a review of their condition. The Director will explain this process and invite you to make a submission within 10 days.

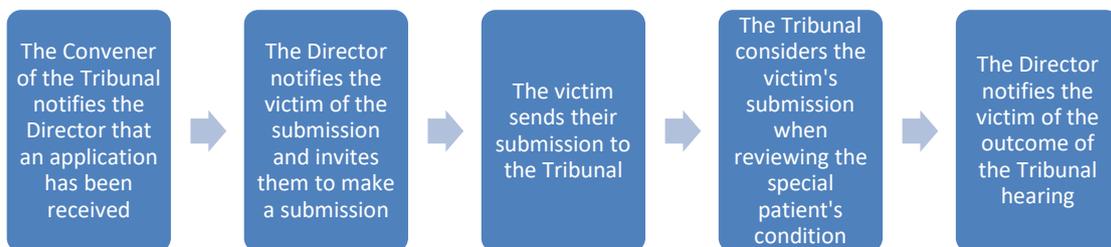
The Tribunal will consider your submission when deciding if the person who offended against you still requires special patient status. Please know that the special patient may be provided with a copy of your submission so they can give their view on it to the Tribunal. This happens because requirements of fairness apply to the Tribunal.

The Director will notify you of the Mental Health Review Tribunal’s decision once it has been made.

Please note that it can take up to 8 weeks for the Tribunal to make a decision. Figure 6 summarises this process.

If the Tribunal decides that the person no longer needs to be a special patient, an application for a change of legal status will be made. See Part 6 for an outline of this process.

Figure 6: The process of a Mental Health Review Tribunal hearing



Part 8. Other reasons special patients are discharged from hospital

In addition to the processes for discharge outlined in Part 6, a special patient detained in a hospital for mental health care can be discharged from the hospital for reasons such as the following.

- The person was previously found unfit to stand trial and has now reached the maximum period of detention.¹⁴
- The person was previously found unfit to stand trial but now has become fit to stand trial and the Attorney-General makes directions about their legal status.
- The person had a prison sentence and that sentence has now expired.
- The person was previously transferred from prison to a hospital for mental health care. Now clinicians consider they are well enough to be transferred back to prison to continue to serve their sentence.

As a registered victim, you (or your representative) will be told if any of the above events happen.

Every person's unique circumstances influence the kind of support they receive after they are discharged from hospital. It is important to know that a special patient is only discharged from hospital at the point when the responsible authorities decide that they no longer need to be a special patient. This happens when the responsible authorities consider the special patient's risk to you as a victim, to themselves and to others is no longer a concern and so their status as a special patient ends.

For more information about the management of special patients, refer to **Special Patients and Restricted Patients: Guidelines for Regional Forensic Mental Health Services**.¹⁵

¹⁴ The maximum period for holding a defendant who has been found unfit to stand trial is 10 years from the date of the order (if the crime committed was punishable by life in prison) or half the maximum term of imprisonment.

¹⁵ Ministry of Health. 2022. *Special Patients and Restricted Patients: Guidelines for Regional Forensic Mental Health Services*. Wellington: Ministry of Health. URL: health.govt.nz/publication/special-patients-and-restricted-patients-guidelines-regional-forensic-mental-health-services (accessed 19 December 2022).

Glossary

Term	Definition
Criminal Procedure (Mentally Impaired Persons) Act 2003 (CP MIP Act)	The CP MIP Act provides the procedure for determining whether a defendant is unfit to stand trial or insane. It also provides a process for reaching an outcome in cases where a defendant is found unfit to stand trial or insane.
Director of Area Mental Health Services (DAMHS)	The Director-General of Health appoints each DAMHS under section 92 of the Mental Health Act. They are responsible for the day-to-day operation of the Mental Health Act in their appointed area. For guidelines on the role and function of a DAMHS, see the Ministry of Health website.
Director of Mental Health	The Director of Mental Health is appointed under section 91 of the Mental Health Act. The Director of Mental Health is responsible for the general administration of the Mental Health Act.
Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Mental Health Act)	<p>The Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Mental Health Act) provides a legal framework for those who require compulsory psychiatric assessment and treatment for people experiencing a mental illness.</p> <p>The Mental Health Act defines the rights of patients and proposed patients to provide protection for those rights, and generally to reform and consolidate the law relating to the assessment and treatment of people suffering from mental disorder.</p>
Minister of Health (the Minister)	The head of the government department of health. The Minister is responsible for protecting and promoting public health.
Patient	A person who is receiving compulsory mental health treatment under the Mental Health Act.
Responsible clinician	The health professional in charge of the care and treatment of the special patient or the patient.
Registered victim	A victim who is on the victims' notification register.
Special patient	A person who is remanded to or detained in a hospital to receive compulsory mental health treatment.