DONNA MURPHY

COMPANIONS IN CARE, AND COERCION: An introduction to the legislation that enables high and complex care for people with intellectual disability

GRADUATE CERTIFICATE IN LAW

LAWS 542: HEALTH LAW

FACULTY OF LAW

TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI

VICTORIA
UNIVERSITY OF WELLINGTON

2017

Companions in care, and coercion: An introduction to the legislation that enables high and complex care for people with intellectual disability

Abstract

This paper studies the current New Zealand legislation which provides care pathways for people with intellectual disability who come into contact with the criminal justice system. It looks at how it operates in practice, and what recommendations might be required to improve it.

Word length

The text of this paper (excluding abstract, table of contents, footnotes and bibliography) comprises approximately 7,555 words.

I Introduction

This paper set out to look at what legislation was in place to assist in providing supports to adults who are under 65 and have high and complex needs. This found me wading through an electronic jungle of Ministry of Health reports, only to find in small type somewhere, (usually on the second read), that the population I was wanting to learn about were excluded from yet another research project.

With perseverance I discovered there was dedicated legislation relating to this area and this paper will look at supports provided through the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 [IDCCR] which, alongside the Criminal Procedure (Mentally Impaired Persons) Act 2003 [CPMIP], provides persons with intellectual disability alternative care options to prison should they come into contact with the criminal justice system.

The background and context of these Acts will be discussed, followed by an outline of the legislation. Many potential issues raised in their conception stage will be discussed, along with some other aspects that have proven to be challenging in practice.

Recommendations will be looked at through the paper also with consideration of areas that may need changes or improvements.

II Background to the Criminal Procedure (Mentally Impaired Person Act) 2003 and the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

Two case examples were used in the parliamentary debates to highlight the need for new legislation as "specific cases often drive a need for legislative change, because they demonstrate so clearly where the gaps are"[1]. These cases provide a good illustration of the impact government legislation and policy has on the intellectually disabled population. They will each be followed by an historical account of the contextual issues faced at that time.

[1] 21 Oct 2003 612 NZPD at 9559

A Deinstitutionalisation

The first case example used was that of David Stephens who came to the attention of the Court following closure of the institution he had been living in. In the community, he was arrested following assault, remanded to prison "with a bunch of nappies" and then ordered to stay in institutional care. There was there was no legal ability for him to remain in care as he did not meet criteria for the Mental Health (Compulsory Assessment and Treatment) Act 1992 [MHCAT]. The process of deinstitutionalisation saw the latest institution that had provided care for him preparing to close also[2]. His parents had grave concerns about him going back into the community and re-offending with no alternative than prison care for him[3].

1 Institutionalisation in New Zealand

New Zealand has a legislative history of control over people with disability. Unfortunately, a lot of the material read about this history does not distinguish intellectual disability from other forms of impairment.

The Lunatics Ordinance Act 1846 made provision for the "safe custody and prevention of offences by those deemed dangerously inane or of unsound mind[4]".

The eugenics movement toward the end of the 19th century provided support for institutionalisation by removing those with less desirable traits from society[5]. Links were made between intellectual impairment and sexual offending in the 1920's resulting in "at risk" children being removed from their families and placed in care[6].

There were differing standards of care in institutions with those seen as "recoverable" receiving better accommodation and care. The rest were kept out of sight, and described by author Janet Frame as "forgotten people"[7]. Stace likens those in institutions to

---

[2] New Zealand Herald *Parents to relive nightmare* 16 Nov 2001

[3] (21 October 2003) 612 NZPD 9558

[4] Office for Disability Issues, Office for Disability Issues "History of Disability in New Zealand" <www.odi.govt.nz>

[5] Office for Disability Issues, above n 6

[6] Hilary Stace "Some aspects of New Zealand's History Part 1 (3 Nov 2014) Public Address Blog. Access: Disability and Different Worlds <www.publicaddress.net>

[7] Tess Brunton "IDEA Services plan to cut 5 per cent of its business, affecting more than 1000 service users" (23 March 2017) Stuff News <http://www.stuff.co.nz >

"inmates" who "provided large captive communities for doctors and specialists to practice theories and interventions"[8].

2 Time for change?

The World Health Organisations 1953 report *The Community Mental Hospital*, drew attention to the undesirable effects of institutionalisation and recommended a change of approach to institutional care.[9]

The return of soldiers after the war placed huge demand on mental and physical health services. Active rehabilitation became prioritised to assist in the return to "social effectiveness" of patients[10]

The Intellectually Handicapped Parents Association, formed in the late 1940's, were campaigning at the same time for homes to replace institutions, and for the resourcing of appropriate supports to assist people with intellectual disability to be cared for in the community[11].

The Government was sending out a different message:[12]

> In spite of best practice evidence and parental advocacy turning against the institutions, the 1953 report of the National Government's *Consultative Committee*, which became known as the Aitken report… recommended that disabled and mentally ill people be housed in large 'mental deficiency colonies' containing several hundred people, and extending current institutions such as those at Levin (Kimberley) and Templeton.

Overcrowding in institutions was an issue until the 1960's with 10,100 beds in use at the peak of institutionalisation[13]. It is recorded in the biography of Robert Martin that in the

---

[8] Stace, above n 8

[9] Brunton, above n 9 at 81

[10] Brunton, above n 9 at 93

[11] Brigit Mirfin-Veitch and others "Developing a more responsive legal system for people with intellectual disability in New Zealand" September 2014 Donald Beasley Institute at 19

[12] Hilary Stace "Some aspects of New Zealand's History Part 2 (16 Dec 2014) Public Address Blog. Access: Disability and Different Worlds <www.publicaddress.net>

[13] Brunton, above n 9 at 77

1960's New Zealand children were placed in facilities at 4 times the rate of those in England and America[14].

In a market driven economy, government expenditure on institutional care was criticised along with disempowerment of service users by not allowing choice[15]. In 1985 the Government made the policy announcement that all people living in institutional care were to be moved into the community and so began the formal deinstitutionalisation process.[16] No clear goals or definition of deinstitutionalisation was given other than "it did not involve residence in an institution[17]".

MacKinnon and Coleborne write that the utopian ideal of people in the community caring for those with disability needed to be a reality to achieve successful outcomes from deinstitutionalisation. They dispute whether deinstitutionalisation achieved independence or neglect.

B Changes to the Mental Health (Compulsory Assessment and Treatment) Act 1992

The second case example used in parliament, was the release of sex offender Barry Ryder from a psychiatric hospital, following the implementation of the MHCAT. Barry went on to reoffend less than a year later, imprisoned, then committed further offences in 2003 following release on parole[18].

The MHCAT replaced the Mental Health Act 1969 and specifically excluded intellectual disability from its powers. The impact this change would have on those who did not meet the definition of mentally disordered was not considered by Parliament at that time[19].

A year later intellectual disability made its first appearance in New Zealand case law. This case clearly exposed the gaps that had been created by the MHCAT[20]:

---

[14] John McRae "Becoming a Person: The biography of Robert Martin" (2014) Craig Potton Publishing at 11

[15] Cheyne and others *Social Policy in Aotearoa New Zealand: a critical introduction* (Oxford University Press, Auckland 1998) at 226

[16] Paul Milner *An examination of the outcome of the resettlement of residents from the Kimberley Centre* (Donald Beasley Institute 2008) at 11

[17] Dolly MacKinnon and Catharine Coleborne "Deinstitutionalisation in Australia and New Zealand" (2003) 5 (2) Australian and New Zealand Society of the History of Medicine, Inc 1-16 at 10

[18] New Zealand Herald *Pedophile case 'needs scrutiny'* 19 January 2003

[19] (2 June 1992) 525 NZPD 8455 Mental Health (Compulsory Assessment and Treatment) Bill 3rd reading

[20] *R vT* (1993) CRNZ 507

> T is mentally retarded but not mentally ill… It is clear that his intellectual disability renders him incapable of giving proper instructions to his counsel. The question is whether he should stand trial and if not, whether he should be a special patient or an ordinary patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992 which came into force on 1 November 1992. Prior to that date the answer to these questions would have been fairly straightforward. The new legislation, however, contains new definitions and other provisions which have made the Court's task more complicated

R v T saw psychiatrists take differing views as to appropriateness of MHCAT for persons with intellectual disability and raised questions about whether a disorder of cognition[21] would include intellectual disability given that section 4 of that Act deliberately excluded "intellectual handicap"[22].

Brookbanks in 1994 argued the need for standalone legislation to address specific needs of the intellectually disabled offender group and those who pose risk to public[23].

C The Parliamentary Passage

The Intellectual Disability (Compulsory Care) Bill and the Criminal Justice Amendment Bill (No 7) [the Bills] were introduced to Parliament in 1999 by the Rt Hon Wyatt Creech. The parliamentary passage took four years to complete.

Non-offenders were included in the introduction of the Intellectual Disability (Compulsory Care) Bill but removed following submissions and concerns about the connection of intellectual disability with crime and perceived risk and detention which was unjustified and in breach of human rights[24].

In 2003, they were brought to the House under urgency accompanied with lengthy supplementary papers [SOPs] which had only been given to members the evening before.

---

[21] MHCAT s 2

[22] Warren Brookbanks "Fitness to plead and the Intellectually Disabled Offender" (1994) Vol.1(2), University of Auckland Psychiatry, Psychology and Law.171-180
at 175

[23] Brookbanks above n 22 at 179

[24] Intellectual Disability (Compulsory Care) Bill commentary(pdf provided by Parliamentary Information Services) at 3

There was much criticism from opposition parties about the process followed by the Labour led Government. Significant changes had been made with no time for careful consideration, and the select committee had not been given the opportunity to consider changes contained in the SOPs.

3 CPMIP Act proposed instead of amendment to Criminal Justice Act

A major change in this SOP was the CPMIP becoming an Act on its own when all throughout the select committee process the Bill had been proposed as an amendment to s 7 of the Criminal Justice Act 1985[25]. As it had received no select committee scrutiny National, NZ First, and ACT felt they had no option other than to vote against it[26].

4 IDCCR title change – did not previously include "Rehabilitation"

The term rehabilitation was added by the select committee to provide for plans to assist people back into the community and to prevent people receiving custodial care only. In the debates, there was concern about how rehabilitation fitted with intellectually disability which is a permanent condition. There was also concern that the no definition of the term was provided[27].

5 Remand/Leave

The possibility of bail for some offenders was another highly criticised change revealed in the SOP. Pansy Wong (National) did not think it was adequate to leave this as a discretionary decision for a Judge. The case of Paul Ellis, who murdered his father after being released from a psychiatric unit without a full risk assessment, was cited[28].

Of relevance is that bail laws in New Zealand are currently dominating news headlines with a review being called for. Confidence in Court decisions about bail is being questioned as an inquest into the death of *Christine Marceau* continues. Her killer, *Akshay Shand*, was released on bail a month prior with a psychiatrist's assessment

---

[25] House of Representatives Supplementary Order Paper 161 Criminal Justice Amendment Bill (no 7) at 1

26 Criminal Justice Amendment Bill (No 7) Consideration of report of Health Committee (21 October 2003) 612 (NZPD) at 9535 - 9541

[27] Intellectual Disability (Compulsory Care and Rehabilitation) Bill – In committee (21 Oct 2003) 612 NZPD at 9569 - 9574

[28] 3rd reading (21 October 2003) 612 NZPD at 9547

regarding fitness to stand trial referred to in the hearing. Subsequently Shand was found not guilty of murder because of insanity[29].

III Criminal Procedure (Mentally Impaired Persons) Act 2003

The CPMIP was described as a companion to the IDDCR in the Bill's 3rd reading. Many of its procedures direct the reader to provisions under the IDCCR. The term "mental impairment" was deliberately left undefined to avoid another unintentional gap in legislation. Its meaning is taken to include both "mental disorder" and "intellectual disability" both of which are defined in the MHCAT and IDCCR Acts[30].

The purpose of the CPMIP is[31]:

(a) provide the courts with appropriate options for the detention, assessment, and care of defendants and offenders with an intellectual disability:
(b) provide that a defendant may not be found unfit to stand trial for an offence unless the evidence against the defendant is sufficient to establish that the defendant caused the act or omission that forms the basis of the offence:
(c) provide for a number of related matters.

The CPMIP applies only to defendants charged with an imprisonable offence[32]. The CPMIP instructs the process for when concerns are raised about someone being unfit to stand trial, or insane. It contains powers to determine this, and authorises detention under the IDCCR.

IV Intellectual Disability (Compulsory Care and Treatment) Act 2003

Once a decision has been made for an assessment to determine whether intellectual disability has deemed a person unfit to stand trial, or insane, the CPMIP directs the Court to the IDCCR.

---

[29] Tommy Livingstone "Murder Inquest: Psychiatrist thought teens killer had 'no hope' of being bailed. 16 June 2017 Stuff News <www.stuff.co.nz>

[30] Criminal Procedure (Mentally Impaired Persons) Bill

[31] CPMIP s 3

[32] CPMIP s 5

The purposes of this Act are[33]:

> (a) to provide courts with appropriate compulsory care and rehabilitation options for persons who have an intellectual disability and who are charged with, or convicted of, an offence; and
>
> (b) to recognise and safeguard the special rights of individuals subject to this Act; and
>
> (c) to provide for the appropriate use of different levels of care for individuals who, while no longer subject to the criminal justice system, remain subject to this Act.

The principles governing exercise of powers under the IDCCR are the protection of the "health and safety of the care recipient and of others; and the rights of the care recipient"[34]. The rights and autonomy of an individual weighed against community protection has been a common theme in the course this paper is written for. In relation to people with intellectual disability who are charged with offences, Phil Goff (the Minister of Justice at the time) stated that "in cases where things are evenly balanced, the Judge must give paramount consideration to the safety of the community[35]".

The Ministry of Health, Disability Support Services [DSS], funds services to administer this Act as part of its high and complex framework [36]. The National Intellectual Disability Care Agency (NIDCA) holds the contract for needs assessment and service coordination

Decisions about the need, and level of care required are made by the Court, based on evidence received and recommendations from Specialist Assessors. The decision about where a person receives their care is made by NIDCA[37].

---

[33] IDCCR Act s 3

[34] IDCCR s 11

[35] CPMIP 3rd reading

[36] Ministry of Health *Intellectual Disability (Compulsory care and rehabilitation) Act 2003* <http://www.health.govt.nz/our-work/disability-services/about-disability-support-services/intellectual-disability-compulsory-care-and-rehabilitation-act-2003>

[37] Ministry of Health *Intellectual Disability (Compulsory care and rehabilitation) Act 2003* <http://www.health.govt.nz/our-work/disability-services/about-disability-support-services/intellectual-disability-compulsory-care-and-rehabilitation-act-2003>

An eligible person is referred to as a "care recipient". This term includes "special care recipients" who are detained in secure facilities, whereas a care recipient could be under secure or supervised care and may no longer be subject to any criminal sentence. Part 3 of the IDCCR provides instructions about needs assessments, and care and rehabilitation plans.

The Family Court has jurisdiction under the IDCCR with the District Court able to assist if needed.[38] The NIDCA Coordinator (a designated role under the Act) is responsible for making applications to the court for orders and any variations to them.

The Coordinator has a lot of influence over care recipients under the IDCCR. Martin-Veitch and others were concerned that the care recipient's dependence on the Coordinator to make discharge applications on their behalf without being able to do so themselves was the "ultimate arbitrary detention[39]". This also could be considered in breach of the United Nations Convention on the Rights of Persons with Disabilities, Article 12 Equal recognition before the law (4) in that "measures relating to the exercise of legal capacity…are free of conflict of interest and undue influence"[40].

As of 14 April 2017, there are 119 people under IDCCR compulsory care orders and 12 people under assessment[41].. This is a very small percentage of New Zealand's population of 4,603,202[42] and not too far over the 50 – 100 person estimate made by the Health Committee in 2003[43].

V Issues and challenges with the Acts

These Acts have been referred to as complex by politicians, Judges, and NIDCA administrators, with good reason. When setting out on this research it was quite a task understanding the process involved for a defendant from start to finish as one must refer and forwards between the two Acts, and the various sections within them, with little logical flow in the CPMIP.

---

[38] IDCCR s 116

[39] Brigit Mirfin-Veitch and others "Developing a more responsive legal system for people with intellectual disability in New Zealand" September 2014 Donald Beasley Institute at 40

[40] UNCRPD Article 12(4)

[41] Ministry of Health, email correspondence containing statistics 13 June 2017

[42] Worldometers "New Zealand population live" retrieved 16 July 2017 < http://www.worldometers> /

[43] Intellectual Disability (Compulsory Care Bill) Consideration of report of committee 21 October 2003 at 9559

Commonly cited cases involving the IDCCR, and cases published between Jan 2016 – June 2017[44] were looked at as part of this paper to assist with understanding some of the contemporary issues and decisions that are occurring in the Courts. It is these and the 2003 parliamentary debates that will inform discussion in this next section.

D Intellectual Disability

There are three criteria that must be met to meet the IDCCR requirement for Intellectual Disability[45]

> (1) A person has an **intellectual disability** if the person has a permanent impairment that—
>
> (a) results in significantly sub-average general intelligence; and
>
> (b) results in significant deficits in adaptive functioning, as measured by tests generally used by clinicians, in at least 2 of the skills listed in subsection (4); and
>
> (c) became apparent during the developmental period of the person.

During the passage of the IDCCR Act the threshold for subpart (1)(a) was lowered with an intellectual quotient (IQ) of 70 being required. Yet another last-minute change contained in a SOP which disregarded the Select Committee recommendation of 75 and was critiised for being too rigid.[46].

The latest version of the American Psychiatric Association, Diagnostic and Statistical Manual, removes test scores from intellectual disability diagnosis criteria. Rather they are to be used alongside clinical assessments of adaptive functioning to ensure they are not over-emphasized.[47]

A Donald Beasley Institute study found lawyers concerned that many people with intellectual disability who had committed offences did not meet the threshold. This made them vulnerable when left to the criminal justice system as unable to access appropriate

---

[44] Westlaw database search using the IDCCR as search term under legislation cited.

[45] IDCCRA s 7(1)

[46] Intellectual Disability (Compulsory Care and Rehabilitation) Bill – In committee (21 Oct 2003) 612 NZPD at 9576

[47] American Psychiatric Association "DSM V: Intellectual Disability" <www.psychiatry.org>

supports and "in some cases, seriously impinged on people's human rights and access to justice."[48]

Pora v R saw a Privy Council finding of wrongful imprisonment for a man with obvious cognitive impairment. Despite significant deficits in executive functioning[49], a demonstrated inability to understand the implications of the proceedings or give any reliable account of events he would not have met the current criteria for intellectual disability under the IDCCR as he had an IQ of 83[50] .

Another issue arising here is the age specification. Impairments affecting intelligence and function can also be caused by accidents or medical events later in life such as head injury or stroke. Their exclusion seems unusual given the context in which the IDCCR Act was required and has created another gap, which will require a lot of creativity from professionals working with them until it is addressed adequately. And so history repeats…

More flexibility in the defined criteria would allow intellectually disabled defendants, with genuine difficulties, to have fair access to justice by not being disadvantaged in their ability to participate in court processes. The high threshold for eligibility to services under the IDCCR could be seen as a breach of the Right to Freedom from Discrimination[51].

6 Identification

Early identification of intellectual disability enables consideration of the CPMIP from the outset which should minimize the distress involved in the legal process[52]. This would ideally occur at the time of arrest as some lawyers reported that people with intellectual disability were vulnerable at that time with pressure applied to obtain guilty pleas, or

---

[48] Brigit Mirfin-Veitch and others "Developing a more responsive legal system for people with intellectual disability in New Zealand" September 2014 Donald Beasley Institute at 38

[49] R v Pora [2015] UKPC 9

[50] R v Pora above n 58 at [45]

[51] New Zealand Bill of Rights Act 1990 s 19 (1)

[52] Brigit Mirfin-Veitch and others "Developing a more responsive legal system for people with intellectual disability in New Zealand" September 2014 Donald Beasley Institute at x

were susceptible to suggestions put to them by lawyers or the police[53]. In some English jurisdictions, forensic nurses are located at police stations to assist with identification of impairment[54].

In *Pora v R*, his impairment was obvious early on, with implausibility, inconsistency and bizarre responses to questioning[55]. Pora was wrongfully convicted and served 21 years in jail. Following appeal to the Privy Council he received $2.5 million in compensation[56]. This miscarriage of justice could have been prevented if concerns about mental impairment were given proper consideration at any stage during the criminal sentencing process and later again in the Court of Appeal. [57]

The CPMIP allows the question of unfitness to stand trial to be made at any point in proceedings until all the evidence is concluded. In *Nonu v R*[58] sentencing was adjourned following a Court Reporter's suggestion for a neuro-psychological assessment. The outcome was Nonu may not have been fit to stand trial. Because the finding had occurred after all the evidence had been obtained an appeal was made to determine if the conviction should be quashed. Further health assessments determined he had not been fit to stand trial and a re-trial was ordered. The Court Reporter's observations and actions are to be commended here but once again, earlier identification from professionals would have prevented him going through a drawn out court process.

The recommendation by Mirfin-Veitch for the inclusion of education about intellectual disability to be included in front line training for police and in undergraduate training for lawyers is supported by the author[59].

---

[53] Mirfin-Veitch and others above n 52 at 31

[54] Brigit Mirfin-Veitch and others above n 52 at 64

[55] R v Pora [2015] UKPC 9 at [7]

[56]Sam Sachdeva and Shane Colishaw "Teina Pora to receive $2.5 million in compensation for wrongful conviction, but his lawyers are disappointed" (15 June 2016) Stuff News

[57] R v Pora [2016] 1 NZLR 277 at [58]

[58]

[59] Brigit Mirfin-Veitch and others "Developing a more responsive legal system for people with intellectual disability in New Zealand" September 2014 Donald Beasley Institute at ix

7 Assessment

A health assessor for the purposes of the Acts is currently a Registered Psychologist or Consultant Psychiatrist[60].

They are asked to assess and report on[61]:

> (a) whether the person is unfit to stand trial:
> (b) whether the person is insane within the meaning of section 23 of the Crimes Act 1961:
> (c) the type and length of sentence that might be imposed on the person:
> (d) the nature of a requirement that the court may impose on the person as part of, or as a condition of, a sentence or order.

The Ministry of Health have guidelines for specialist assessors to assist with their assessments and diagnosis of intellectual disability[62].

It is not stipulated in the legislation when the assessment to diagnose intellectual disability should occur. Wording in the CPMIP implies a diagnosis under that Act prior to moving them under the IDCCR for a needs assessment[63]. Given the definition and criteria for intellectual disability are only provided in the IDCCR it would seem logical that any diagnosis would instead fall under the auspices of that legislation although that would not fit well with the need for early identification. NIDCA have concerns that this is unclear and contentious and requires clarity in the form of a statutory amendment.[64]

8 Diagnosis

There can be fluctuations in a person's presentation. In *R v Balem*[65], it was found that Balemi was unfit to stand trial, but when further assessed in remand it was found he was

---

[60] Email correspondence with NIDCA Manager 8 June 2017

[61] CPMIP s 38(1)

[62] Ministry of Health *Guidelines for the Role and Function of Specialist Assessors Under the Intellectual Disability (Compulsory Care and Rehabilitation Act) 2003* (August 2004)

[63] CPMIP ss 23 & 35

[64] Email conversation with NIDCA Manager 8 June 2017

[65] R v Balemi [2015] DCR 20

now fit to stand trial. Neither counsel thought sentencing could proceed once unfitness to stand trial had been determined.

Reference was made in this case to *Police v NJ*[66] where once a diagnosis of intellectual disability had been determined by the Court, it could not be contradicted by specialist assessor at the IDCCR part 3 assessment stage as would call into question the Courts determination of unfitness to plea and would curtail disposition options[67]. In this case the decision by Judge BA Gibson involved a complicated process "to fill gaps…to make the legislation work"[68] The Judge commented[69]:

> It seems to me that the decision as to fitness to stand trial is not a final judgment in the way contended for by Mr Mansfield. It is simply a determination at a point in time of the issue of fitness. Fitness, as is well known, can change at any stage of the trial process"

The Court provided guidance in *Harvey v AT* about the need for an ID diagnosis to be reviewed periodically through the lifespan of a compulsory care order and when considering extensions to it. This was a requirement of the Act in relation to an individual's rights and their eligibility to remain under the Act[70].

Smith's research drew attention to an unanticipated group of people coming under the IDCCR who were not captured in the Governments research and legislation design phase[71].

These "new care recipients" are first diagnosed when they come to the attention of the justice system and have had no contact with support services up until this point[72]. Judges referred to these people as borderline, who were more likely than others to end up in the prison system as had become skilled at "hiding" their impairments[73]. Smith writes that

---

[66] Police v NJ 22/9/2010 NZHC unreported CRI-2010-404-309

[67] R v Balemi above n 67 at [9]

[68] R v Balemi above n 67 at [18]

[69] R v Balemi above n 67 at [16]

[70]Harvey v AT [2016] NZFC 3928

[71] Amanda Smith "Experiences of the IDCCRA: A discourse analysis" (DHSC A Thesis submitted to Auckland University of Technology 2015) at 185

[72] Amanda Smith "Experiences of the IDCCRA: A discourse analysis" (DHSC A Thesis submitted to Auckland University of Technology 2015) at 37

[73] Mirfin-Veitch and others above n 55 at 48

criminal behavior for this group is more related to social and environment contexts than their intellectual disability and the IDCCR has given them a "disabled" title[74].

R v K saw decisions made under the IDCCR with an unconfirmed cause of cognitive impairment which could have included age related conditions such as Alzheimer's Disease or Dementia[75]. This could see further changes in the population coming under the IDCCR for cases where it is too difficult to determine if impairment was present prior to 18 years of age.

E The interface between Law and Medicine

A submission to the select committee from the New Zealand Law Society raised a concern about health assessors making recommendations on length of sentences[76]. It is clear in the Acts that the role of the health assessor is to provide evidence that may assist the Court.

In *RIDCA v VM*[77] the Crown argued that decisions should be determined using the same guidelines the health assessors did. The Court of Appeal responded[78]:

> We see some difficulties in that argument. First, the guidelines are just that: guidelines. Second, the guidelines must conform with the IDCCR Act, not vice versa. Third, they are guidelines for health assessors, not for Judges making decisions on applications for extension. The roles should not be confused.

US case *Moore v Texas* discusses in depth the diagnosis of intellectual disability in relation to a death penalty decision and the role of medical professionals in diagnosing and judges in applying that to the law.[79]. The New Zealand Law Commission provide clarity of roles with a diagnosis for the purpose of defence being "a question of law for the judge to decide[80]".

---

[74] Amanda Smith "Experiences of the IDCCRA: A discourse analysis" (DHSC A Thesis submitted to Auckland University of Technology 2015) at 185

[75] *R v K* [2017] NZHC 518

[76] Criminal Justice Amendment Bill (no.7). As reported from the Health Committee. Commentary at 10

[77] *RiDCA v VM* [2011] NZCA 659

[78] RIDCA v VM above n 86 at [47], quote at [48]

[79] *Moore v Texas* 581 US 15-797 (March 2017)

[80] New Zealand Law Commission report to the Minister responsible for the Law Commission Mental Impairment, Decision Making and the Insanity Defence NZLC R 120 16 December 2010 at 27

In the inquest of *Christine Marceau's* murder, it is reported that an assessment conducted by a psychiatrist for a specific matter regarding fitness to stand trial, was used to assist the Judge with a different decision, that of bail. The Psychiatrist was not aware that his report would be referred to at the bail hearing as the two assessments would be quite different[81]. This illustrates the care and context that must be taken when using specialist assessments to assist judicial decision making.

VI Detention

There are different forms of detention under the Acts. The court can use its powers to detain people in specified places pending hearings, appeals or assessments for no longer than 30 days. They can also order someone to be detained for longer periods of time through compulsory orders under the IDCCR.

Submissions to the Health Committee criticised the 30 day remand period for being too long but remained as it was considered that this time may be required to allow a range of options to be considered[82].

A person who has been found unfit to stand trial and is detained as a special care recipient has a maximum detainment period of 10 years if they were charged with an offence punishable by life imprisonment, or a period equal to half the maximum term they would have been liable for if convicted.[83]. "

The right to be presumed innocent until proved guilty according to law"[84] appears at contradiction with someone found unfit to stand trial being given a term as a special care recipient calculated from the equivalent prison sentence:

A person acquitted on account of insanity does not appear to have any specified duration of detention[85].

---

[81] Tommy Livingstone "Murder Inquest: Psychiatrist thought teens killer had 'no hope' of being bailed. 16 June 2017 Stuff News <www.stuff.co.nz>

[82] Criminal Justice Amendment Bill (No 7) Government Bill as reported by the Health Committee at 7

[83] CPMIP s 30

[84] New Zealand Bill of Rights Act 1990 s 25 (c)

[85] CPMIP s 33

In two cases studied, it was considered by the presiding Judge that a discharge home with conditions would be the best outcome for the defendant. This could not occur as is not provided for in the Acts[86]. This is an area which could easily be amended to allow flexibility from the Court in making decisions about care.

F Prisoners and Special Patients

Prisoners, or Special Patients (under the MHCAT), on application to the Coordinator, may be taken to a facility for an assessment to confirm their eligibility, and for their needs assessment under Part 3 of IDCCR.[87]. The assessment for eligibility under the IDCCR must take place within 7 days[88].

VIIIDCCR Part 3 - Needs Assessment and care and rehabilitation plan

The purpose of the needs assessment is to assess what care the person requires, identify a suitable service or providing this and to prepare a care and rehabilitation plan for the care recipient[89].

G Family Involvement

The assessment begins with the coordinator holding a meeting with the care recipient and any other person concerned with their welfare[90] and it must be completed within 30 days of that meeting[91].

The logistics of coordinating a meeting with all concerned parties could cause delays, or see meetings occurring without significant people present. The requirement for consultation with other persons, including welfare guardians, only states that "all reasonable efforts[92]" must be made. This was criticised in the 3rd reading of the IDCCR Bill as being too vague as it is imperative they are included.

---

[86] See *R v K* [2017] NZHC 518 and *K v R* [2016] NZHC 906
[87] IDCCR Part 4 s 35
[88] IDCCR s 34
[89] IDCCR s 16
[90] IDCCR s 18
[91] IDCCR s 19
[92] IDCCR s 21(1)

Family participation is a right under the IDCCR[93]. This is resourced for and all care recipients have full access to technology to enable this. Funding is also available to assist with travel for up to three visits a year.[94]. Haumietiketike (a Wellington facility) was praised in a recent United Nations report for their inclusion of family in review processes[95].

H Children

83% of submissions to the Health Committee raised concerns about the inclusion of children in the IDCCCR. An amendment to the Children, Young Persons and their Families Act 1989 was contemplated but decided against because access difficulties for specialised services would result in children with intellectual disability being disadvantaged against[96]. Specific principles for Children are contained in the IDCCR and appear very similar to those in the Children, Young Persons and Their Families Act 1989. Apart from that children do not feature much in the IDCCR and there is no reference to them in the CPMIP. There is no procedural pathway detailed for them unlike the detail given for many other aspects in both Acts.

There were concerns raised in the parliamentary debates about young people with intellectual disability being detained in secure facilities with other offenders [97]. In *Police v KT* Judge Hikaka commended the thoroughness of KT's care plan and its implementation which allowed for appropriate secure care, away from other offenders[98]. There is a national youth unit based in Wellington[99].

At the time of the health committee report there were three young offenders identified as requiring use of the IDCCR. NIDCA state there are currently very few children under the

[93] IDCCR s 50

[94] Email conversation with NIDCA Manager 8 June 2017

[95] Dr Sharon Shalev "Thinking outside the box" a review of seclusion and restraint practices in New Zealand a report commissioned by NZ Human Rights Commission 2017 http://www.seclusionandrestraint.co.nz/seclusion_and_restraint_in_new_zealand_findings_from_the_data_and_visits

[96] IDCCR select committee report at 12

[97] Pita Parone (NZ First) 612 21 October 2003 from 9535 Criminal Amendment Bill (No 7) In committee

[98] Police v KT [2016] NZYC 50 at [7]

[99] Email conversation with NIDCA Manager 8 June 2017

IDDCR. The numbers may be increasing as 23% of IDDCR cases over the last 18 months were dealt with in the Youth Court[100].

I Cultural considerations

Māori are specifically referred to in sections of the IDCCR[101] which was criticised by ACT and National for the singling out of one ethnicity over the rest at risk of causing separatism through race-based law and causing discrimination[102]:

Māori are over represented as care recipients. 38% of people under the IDCCR identify as Māori [103], compared with 15% of New Zealand's total population[104]. Smith's research did not identify any Māori specific issues but says it is likely that the over representation of Māori in both disability and criminal sectors will cause greater marginalisation[105].

Despite the inclusion of Māori specific sections in the legislation, there were no obvious submissions to the Health Committee from any Iwi groups or Māori organisations[106]. This suggests that consultation may not have been done in a way which enabled crucial stakeholders to engage.

The United Nations Human Rights Council recommended that "a review be undertaken of the degree of inconsistencies and systemic bias against Māori at all the different levels of the criminal justice system [107]".

J Care Needs

[100] Case studies above n

[101] IDCCR ss 13 & 23

[102] Heather Roy (ACT) 612 21 October 2017 from 9583 Intellectual Disability (Compulsory Care and Rehabilitation) Bill – in Committee, third reading

[103] Ministry of Health statistics emailed 12 June 2017

[104] Statistics New Zealand "How is our Maori population changing?" <www.stats.govt.nz>.

[105] Amanda Smith "Experiences of the IDCCRA: A discourse analysis" (DHSC A Thesis submitted to Auckland University of Technology 2015) at 200

[106] Lists of submitters to the Health Committee for the CPMIP and IDCCR supplied by Parliamentary Information Services.

[107] Human Rights Council "Report of the working group on arbitrary detention, mission to New Zealand" 6 July 2015 United Nations General Assembly at 21

The Coordinator assesses the care needs in consultation with the care manager of the care recipient, and must make "all reasonable efforts" to consult with other important members of the care recipient's life[108]. This purpose of this consultation is to get a history of the person, establish the level of community support required and ascertain the views of those consulted on the care proposed[109].

K Rehabilitation

With no definition of rehabilitation provided in the IDCCCR, this paper will use the definition of rehabilitation which was cited in *RIDCA v VM* as the[110]:

> Improvement of the character, skills and behavior off an offender through training, counseling, education etc, in order to aid reintegration into society

The Coordinator instructs the care manager to arrange for the preparation of a care and rehabilitation plan which they must approve[111]. The IDCCCR lists eight areas that must be covered in the plan. This list does not put much emphasis on rehabilitation with the focus being on basic care needs only. One matter directly relates to rehabilitation, the identification of "any aptitudes or skills…that should, if practicable, be maintained and encouraged[112]" and arguably "medications needed to manage … condition[113]" could be viewed as a form of aid.

With little emphasis on rehabilitation in the legislation it is little wonder the inclusion of the word in its title was questioned. The Ministry of Health Service Specification provides more optimism in this area. It gives an indication of what is expected in terms of resourcing to enable rehabilitation. This includes occupational therapy, individual counselling, budgeting, and domestic skills[114],

---

[108] IDCCR s 21 (1)

[109] IDCCR s 21(2)

[110] Oxford English definition cited in RIDCA v VM 2012 [73]

[111] IDCCR s 24

[112] IDCCR s 25(1)(e)

[113]IDCCR s 25(1)(c)

[114] Ministry of Health "Service Specification (National)" RIDSS/NIDSS <www.health.govt.nz>at 5

Some issues raised in Smith's research were the artificial environment in which rehabilitation occurred. Having the same daily routines for all does not mirror community independence where activities such as meals and bedtimes have some flexibility[115]. Boredom was experienced by some and the lack of vocational focus was criticised for having an economic impact on the future of the care recipients[116]. Care plans in some cases were limited to basic daily activities such as cleaning teeth[117].

Not all care recipients engage well in rehabilitation with some confusion experienced by service users and providers about "doing time", versus rehabilitation[118] and the need to be "good" to get out was the motivation for some[119].

With the right policies and interventions in place, rehabilitation provides a way to counter any ongoing risk that an offender with mental impairment may provide to themselves and society[120].

The success of rehabilitation depends a lot on the way it is viewed and provided. This takes commitment from care staff to do more than manage behaviour. The use of restraint and seclusion in New Zealand was criticised in Dr Shalev's report as being "chronic" [121]

> I was concerned to note that discussion of what the future held for these individuals appeared to focus on how to 'do' the seclusion/restraint better, or differently…but there

---

[115] Amanda Smith "Experiences of the IDCCRA: A discourse analysis" (DHSC A Thesis submitted to Auckland University of Technology 2015) at 128

[116] Amanda Smith "Experiences of the IDCCRA: A discourse analysis" (DHSC A Thesis submitted to Auckland University of Technology 2015) at 130

[117] Amanda Smith "Experiences of the IDCCRA: A discourse analysis" (DHSC A Thesis submitted to Auckland University of Technology 2015) at 126

[118] Amanda Smith "Experiences of the IDCCRA: A discourse analysis" (DHSC A Thesis submitted to Auckland University of Technology 2015) at 142

[119] Brigit Mirfin-Veitch and others "Developing a more responsive legal system for people with intellectual disability in New Zealand" September 2014 Donald Beasley Institute at 12

[120] Professor Warren Brookbanks "Mentally Impaired Offenders: What's in a name?" 21 February 2014 Auckland District Law Society <www.adls.org.nz>

[121] Dr Sharon Shalev "Thinking outside the box" a review of seclusion and restraint practices in New Zealand a report commissioned by NZ Human Rights Commission 2017 http://www.seclusionandrestraint.co.nz/seclusion_and_restraint_in_new_zealand_findings_from_the_data_and_visits

> appeared to be very little by way of thinking about an entirely different solution to the perceived challenges that these individuals presented

Dr Shalev recommended an independent body to provide oversight into the use of solitary confinement. Mirfin-Veitch also saw the need for monitoring rehabilitation to ensure greater emphasis was placed on it[122].

L Welfare Guardians

A person who meets the criteria of Intellectual Disability under the IDCCCR is vulnerable by definition.

Participation in the development of the care plan under the IDCCR is of great importance and if that person cannot actively participate in this a welfare guardian should be required to do so on their behalf. For someone to have a welfare guardian they have been deemed by a Court to wholly lack capacity. In this case, "all reasonable efforts to consult[123]" with the welfare guardian, is not good enough.

Given that the CPMIP has sections which require consent from a person, or their welfare guardian if they cannot consent[124] a person's capacity for the purposes of decision making and participation in the IDCCR process should occur. Ideally during their first health assessment but there is no requirement for this in the legislation or in the MOH guidelines for assessments[125].

The Minister of Justice requested that the Law Society consider whether the Protection of Personal and Property Rights Act 1988 [PPPR] would require strengthening with the introduction of the IDCCR. Some concerns in the Law Society's report traced back to the introduction of the MHCAT when bulk welfare guardian applications were filed by Kimberley Centre staff following concerns about their legal status in relation to consent with new rights based legislation[126].

---

[122] Brigit Mirfin-Veitch and others "Developing a more responsive legal system for people with intellectual disability in New Zealand" September 2014 Donald Beasley Institute at 39

[123] IDCCR s 21(1)(b)

[124] CPMIP ss 40 and 44

[125] Ministry of Health *Guidelines for the Role and Function of Specialist Assessors Under the Intellectual Disability (Compulsory Care and Rehabilitation Act) 2003* (August 2004) <www.health.govt.nz>

[126] Paul Milner *An examination of the outcome of the resettlement of residents from the Kimberley Centre* (Donald Beasley Institute 2008) at 33

The approval of these was condemned as authorized coercion by the Court as the only purpose these standardised applications served was to allow appointed welfare guardians to delegate care to a facility[127]. A safeguard recommended by the Law Society was amendment to the PPPR Act for more frequent reviews of the welfare guardians to ensure they were active and responsible in their role[128].

The author is of the opinion that all persons coming under the IDCCR should have a determination made about their ability to make decisions to ensure either they, or a legally appointed person is able to participate in aspects relating to their welfare and finances. A responsible guardian will provide protection from unnecessary coercion in matters outside of the restrictions imposed under the IDCCR.

An amendment is needed to ensure welfare guardians are present for needs assessments and care planning. That they are to be consulted with in all reviews and decision making and their active involvement in all aspects of the care recipients daily life is actively encouraged.

VIII Rollover of compulsory care orders

RIDCA v VM established much needed case law in the area of extensions to compulsory care orders. The key issue addressed was "whether risk is an exclusive test, or whether other factors come into play[129]"

This ruling emphasised the need to balance the liberty interests of a person alongside any decision about risk and the need to demonstrate that the level of risk is such to merit the ongoing use of coercive powers. In situations where someone had made no rehabilitation progress and remained a static risk, the greater the justification required for extensions given that they have already had significant time with reduced liberty[130].

---

[127] Law Commission *Protections some disadvantaged people may need* (April 2002) report presented to the House of Representatives at 12

[128] Law Commission *Protections some disadvantaged people may need* (April 2002) report presented to the House of Representatives at 20

[129] RIDCA (Regional Intellectual Disability Care Agency) v VM [2011] NZCA 659 at [49]

[130] RIDCA (Regional Intellectual Disability Care Agency) v VM [2011] NZCA 659 at [91]

There continues to be issues with extension of orders. A hearing is scheduled for July of this year to consider an appeal on the latest extension order for a person who has been detained since 2006 for two relatively minor offences[131]. The United Nations noted concerns about people being detained for long periods of time which often exceeded the maximum length of their sentence[132].

IX Resourcing of the IDCCR

The Ministry of Health fund NIDCA to administer the IDCCR. They contract service providers to deliver national and regional services. The District Health Boards provide secure hospital level care, with other community providers having contracts for secure and supported community based care[133].

NIDCA advise that bed availability is not an issue for those requiring community based care[134] but with limited secure beds and only one youth facility nationwide this may be an area that experiences pressure should demand increase.

Staff are critical to the success of the IDCCR and adequate resourcing must go into ongoing training and recruiting of Coordinators, Specialist Assessors, Nurses, Caregivers and the other health professionals in this specialised area.

Outside of the Health sector resourcing also needs be provided for education to Police, Lawyers and Judges to assist with early identification of intellectual disability and effective communication skills.

M Barriers

Judges referred to the cost of ordering a specialist assessment report as being a barrier to early identification[135]. If an impairment was obvious this assessment would most likely

---

[131] *J v Attorney-General* [2017] NZHC 701

[132] Human Rights Council "Report of the working group on arbitrary detention, mission to New Zealand" 6 July 2015 United Nations General Assembly at [86]

[133] Ministry of Health "Intellectual Disability Compulsory Care and Rehabilitation Act 2003" <www.health.govt.nz>

[134] Email conversation with NIDCA Manager 8 June 2017

[135] Mirfin-Veitch and others above n 55 at 49

be required later at NIDCA's expense. The delay could incur greater cost in unnecessary use of Court time, longer stays in remand care, resulting in potentially longer periods of detention. There needs to be more fluid use of funds with professionals working together for individuals.

N Prevention

In the introductory phase of the Act $50 million of funding was made available to assist with the resources required for its implementation. Part of this money went on supports for non-offenders who the Bill was intending to cover at that stage. It must be noted that adequate funding to support people with high needs in the community is an important part of resourcing to minimize the possibility of future offending.

Tragedies like the murder of Ruby Knox by her mother may have been prevented if more funding was available to assist with the desperate need for respite and support to assist families and/or carers in these very important and demanding roles.[136]

In a climate of increasing pressure on providers to deliver services more efficiently to increasingly complex consumers, health dollars are precious. IDEA services recently cut 5% of services due to limited funding and pressure on services. Ralph Jones (IHC Chief Executive) says the disability support sector is under "immense pressure"[137].

NIDCA are also funded to provide care for people with high and complex needs outside of the IDCCR called civil clients. They account for roughly half of the NIDCA population and although they access the same services, not much is known about them other than they do not have the same legislated rights[138].

---

[136] Charlotte Shipman "Blenheim mum Donella Knox jailed for murdering intellectually disabled daughter" (3 February 2017) Newshub <http://www.newshub.co.nz/home/new-zealand>

[137] Tess Brunton "IDEA Services plan to cut 5 per cent of its business, affecting more than 1000 service users" (23 March 2017) Stuff News <http://www.stuff.co.nz >

[138] Statisitcs received by email from MOH

O Potential for abuse

Concerns have been raised that the IDCCR is being used to obtain funding for service providers with an increase in charges being laid for low level offending by support staff. Lawyers have questioned if the additional funding that comes with people being under orders is an incentive in extensions to care orders being sought[139].

With difficulty in accessing adequate community supports there is potential for families or carers to commission person to criminal activities, or fabricate charges to obtain assured supports for them under the IDCCR.

X Protective Mechanisms

The recognition and protection of rights is central to the IDCCCR. Other protective mechanisms are regular 6 monthly reviews, yearly inspections by District Inspectors and the legislated jurisdiction for a High Court Judge to visit or make inquiries about any care recipient under the IDCCR.

New Zealand Human rights legislation, the Health and Disability Commissioner, the Ombudsman and our signing of the United Nations Convention on the Rights of Persons with Disabilities provide further legislative protection. Unfortunately, it is hard to measure how successful these protections are as the areas that attract the most attention are those where breaches have occurred or where tragedy gives rise for alarm and scrutiny. The IDCCR so far has kept a relatively low profile and avoided the negative media spot light. It is those with intellectual disability who do not fit under the auspices of these Acts and lack the resources, protection and rights that accompany them, who cause public outcry and condemnation and may trigger change as did the case studies referred to in the beginning of this paper.

XI Further Recommendations

P A Disability Court

[139] Brigit Mirfin-Veitch and others "Developing a more responsive legal system for people with intellectual disability in New Zealand" September 2014 Donald Beasley Institute at 39

Having enough time to genuinely involve a person with intellectual disability is an issue in the courtroom. That coupled with complex legal processes and language present barriers to appropriate engagement and communication[140]. People with intellectual disability identified the need for better understanding of them and the context in which they live, and for better communication skills by Judges and Lawyers[141].

The recommendation here is the development of specialist disability court using the Youth Court as a model. This was supported by some lawyers in Mirfin-Veitch's study and would encourage specialisation of IDCCR in the legal field. Education with core competencies in understanding intellectual disability and communication skills with that population being the prerequisites to working in that Court.

Another issue that has been raised twice over the last 18 months is the need to manage the transition from the Youth Court to District Court. A Disability Court could work within the Youth Court for those with intellectual disability to ensure continuity and allow for advocates from the Youth Court to also work across the Disability Court to prevent a crucial support role from ceasing.

Q More accessible Legal Aid

Reductions in legal aid funding has impacted on peoples access to counsel of choice. Lawyers specialised in representing people with intellectual disability need to be remunerated suitably for the work they undertake and consistency of legal representation is crucial to achieving justice. The Law Commission supported continuing legal representation for a person under coercive orders for the duration of their order [142]. It is also more cost effective to be represented by someone already familiar with the background and history of the client. Legal Aid needs to be accessible and work flexibly to ensure people with intellectual disability have access to justice and are not discriminated against because of inadequate resourcing.

---

[140] Brigit Mirfin-Veitch and others "Developing a more responsive legal system for people with intellectual disability in New Zealand" September 2014 Donald Beasley Institute at x

[141] Brigit Mirfin-Veitch and others "Developing a more responsive legal system for people with intellectual disability in New Zealand" September 2014 Donald Beasley Institute at vii

[142] [142] Law Commission *Protections some disadvantaged people may need* (April 2002) report presented to the House of Representatives at 20

R Review of the CPMIP

The CPMIP requires re-writing and simplification. It is unnecessarily complicated with many similar sections containing minor differences and the need to move back and forward between sections to understand process it is little wonder that errors have been made in Court processes and decisions.

XII Conclusion

On first impression it is heartening to see the attention given to care and resourcing under the IDCCR. The detail and thought contained in the legislation demonstrates the importance placed on a small group in society. Indeed there are some areas for improvement but overall it is a tight regime that appears to have achieved what it set out to do.

The next thought that occurs is far more cynical. Has the perceived need for protection driven this more than utopian values. If care and rehabilitation were truly a priority for the intellectually disabled population why does it take a criminal act to access the same? I do not think it is just prison that concerns the parents of those with intellectual disability. It is the daily struggle to have real rights recognised in a society that values cost efficiency with it's own expertise and agenda's being prioritised, over the lived experience of those begging for assistance. .

It took four years for the government to commit in paper to the care for these people, and then under urgency, which is reflected in the poorly constructed CPMIP. The killing of a child by her own mother, due to the inflexibility of the health system to respond to their desperate need, should cause deep shame to the nation.

It does take work and commitment to carefully consider all the factors involved in funded service provision to ensure adequate care and protection . The legislation outlined in this paper is as good a blue print to work from as any. An authentic commitment to all the numbers of the intellectually disabled population is required. Some people are in critical need of care and should not be coerced into committing crime, whatever form it takes, to receive it.

BIBLIOGRAPHY

All websites valid at date of retrieval

CASES

Harvey v AT [2016] 3928
Harvey v Banner [2016] NZFC 2619
NIDCA v Beck [2016] NZFC 1935
J v Attorney-General [2017] NZHC 701
J v Attorney-General [2017] NZHC 701
J v Care Manager [2017] NZHC 15
K v R [2016] NZHC 906
NIDCA Central v Day [2014] NZFC 5777
NIDCA v Lewis [2016] NZFC 2441
Police v KT [2016] NZYC 50
Police v OR [2016] NZYC 172
R v Balemi [2015] DCR 20
R v E [2016] NZHC 738
R v JM [2016] NZYC 361
R v K [2017] NZHC 518
R v Marks [2016] NZHC 2694
R v Morris[2016] NZDC 4029
R v Pora [2015] UKPC 9
R v Pora [2016] 1 NZLR 277
R v T [1993] CRNZ 507
RIDCA (Regional Intellectual Disability Care Agency) v VM [2011] NZCA 659
Smith v R [2016] NZCA 617
SR v R [2011] 3 NZLR 638
Te Korowai-Whariki v Heywood [2016] NZFC 7935

LEGISLATION

Criminal Justice Act 1995
Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003
Mental Health (Compulsory Assessment and Treatment) Act 1992
Criminal Procedure (Mentally Impaired Persons) Act 2003
New Zealand Bill of Rights Act 1990

New Zealand Human Rights Act 1993
Children's Young Persons and Their Families Act 1989
Protection of Personal and Property Rights Act 1988
Public Safety (Public Protection Orders) Act 2014

BOOKS

Cheyne and others *Social Policy in Aotearoa New Zealand: a critical introduction* (Oxford University Press, Auckland, 1998)

John McRae *Becoming a Person: The biography of Robert Martin* (Craig Potton Publishing, Nelson, 2014)

JOURNAL ARTICLES

Dolly MacKinnon and Catharine Coleborne "Deinstitutionalisation in Australia and New Zealand" (2003) 5 (2) Australian and New Zealand Society of the History of Medicine, 1-16

J Hand "Report of a national survey of older people with lifelong intellectual handicap in New Zealand" (1994) (38) Journal of Intellectual Disability Research 275-287

Vanny, Kathryn and others. "People with an intellectual disability in the Australian criminal justice system." (2008) 15(2) Psychiatry, Psychology and Law 261-271.

Warren Brookbanks "Fitness to plead and the Intellectually Disabled Offender" (1994) Vol.1(2), University of Auckland Psychiatry, Psychology and Law.171-180

Warwick Brunton "The Origins of Deinstitutionalisation in New Zealand" (2003) 5 (2) Australian and New Zealand Society of the History of Medicine 75-103

PARLIAMENTARY MATERIALS

(21 October 2003) 612 NZPD 9558 Intellectual Disability (Compulsory Care) Bill as reported from the Health Committee

21 October 2003 Criminal Procedure Mentally Impaired Act 2003 3rd reading (pdf emailed from Parliamentary Informatino Service).

(21 Octobe 2003) Intellectual Disability (Compulsory Care and Rehabilitation) Bill – In committee (21 Oct 2003) 612 NZPD at 9569 – 9574

Intellectual Disability (Compulsory Care) Bill commentary provided by Parliamentary Information Services)

(21 October 2003) Intellectual Disability (Compulsory Care) Bill. Consideration of Report of Health Committee 2nd and 3rd readings

(21 October 2003) Parliamentary Debates Criminal Justice Amendment Bill (No 7) Consideration of report of Health Committee

List of written submissions on Intellectual Disability (Compulsory Care) Bill provided by email from Parliamentary Information Service 8 June 2017

(2 June 1992) 525 NZPD 8455 Mental Health (Compulsory Assessment and Treatment) Bill 3rd reading

House of Representatives Supplementary Order Paper 161 Criminal Justice Amendment Bill (no 7)

House of Representatives Supplementary Order Paper 160 Intellectual Disability (Compulsory Care and Rehabiitation) Act

Criminal Justice Amendment Bill (no.7). As reported from the Health Committee. Commentary at 10 (Document obtained in pdf form from the Parliamentary Information Service)

REPORTS

Brigit Mirfin-Veitch and others *Developing a more responsive legal system for people with intellectual disability in New Zealand* Donald Beasley Institute (September 2004)

Ministry of Health *Guidelines for the Role and Function of Specialist Assessors Under the Intellectual Disability (Compulsory Care and Rehabilitation Act) 2003* (August 2004)

New Zealand Law Commission *Report for the Minister responsible for the Law Commission on Mental Impairment, Decision Making and the Insanity Defence* (16 December 2010)

New Zealand Law Commission *Report for the Minister responsible for the Law Commission: Report 80 Protections some disadvantaged people may need* (April 2002)
Paul Milner *An examination of the outcome of the resettlement of residents from the Kimberley Centre* (Donald Beasley Institute 2008)

United Nations Human Rights Council *Report of the working group on arbitrary detention, mission to New Zealand* (United Nations General Assembly 6 July 2015)

UNITED NATIONS MATERIAL

The United Nations Convention on the Rights of Persons with Disabilities

DISSERTATIONS

Amanda Smith "Experiences of the IDCCRA: A discourse analysis" (DHSC A Thesis submitted to Auckland University of Technology 2015)

Brigit Martin-Veitch "Dislocation: Deinstitutionalisation in the lives of families of people with an intellectual disability" (Thesis submitted for Doctorate in Philosophy University of Otago April 2005)

INTERNET RESOURCES

American Psychiatric Association "DSM V: Intellectual Disability" www.psychiatry.org

Dr Sharon Shalev Thinking outside the box a review of seclusion and restraint practices in New Zealand a report commissioned by NZ Human Rights Commission 2017 (online ed)

The Rules Committee "Minutes of meeting held 10 April 2006." https://www.courtsofnz.govt.nz/>

Hilary Stace "Some aspects of New Zealand's History Part 1 (3 Nov 2014) Public Address Blog. Access: Disability and Different Worlds <www.publicaddress.net>

Hilary Stace "Some aspects of New Zealand's History Part 2 (16 Dec 2014) Public Address Blog. Access: Disability and Different Worlds www.publicaddress.net

http://www.seclusionandrestraint.co.nz/seclusion_and_restraint_in_new_zealand_findings_from_the_data_and_visits

Ministry of Health "Intellectual Disability (Compulsory care and rehabilitation) Act 2003" <www.health.govt.nz>

Ministry of Health "Guidelines for the Role and Function of Specialist Assessors Under the Intellectual Disability (Compulsory Care and Rehabilitation Act) 2003" (August 2004) www.health.govt.nz

Minsitry of Health "Service Specification (National)" RIDSS/NIDSS <www.health.govt.nz>

Office for Disability Issues ""United Convention on the Rights of Persons with Disabilities" https://www.odi.govt.nz>

Office for Disability Issues "History of Disability in New Zealand" https://www.odi.govt.nz/about-disability/history-of-disability-in-new-zealand/

Statistics New Zealand "How is our Maori population changing?" www.stats.govt.nz
Worldometers "New Zealand population live" retrieved 16 July 2017 < http://www.worldometers> /

ARTICLES

Charlotte Shipman "Blenheim mum Donella Knox jailed for murdering intellectually disabled daughter" (3 February 2017) Newshub <http://www.newshub.co.nz/>

Patrick Gower "Parents to relive nightmare" (16 Nov 2001) New Zealand Herald <www.nzherald.co.nz>

NZPA "Pedophile case needs scrutiny" (19 January 2003) www.nzherald.co.nz

Warren Brookbanks "Mentally Impaired Offenders: What's in a name?" (21 February 2014) Auckland District Law Society <www.adls.org.nz>

Sam Sachdeva and Shane Colishaw "Teina Pora to receive $2.5 million in compensation for wrongful conviction, but his lawyers are disappointed" (15 June 2016) Stuff News

Tess Brunton "IDEA Services plan to cut 5 per cent of its business, affecting more than 1000 service users" (23 March 2017) Stuff News <http://www.stuff.co.nz >

OTHER RESOURCES

Email corresponsence with NIDCA manager (8 June 2017)

Email questions and answers between author and NIDCA Manager (8 June 2017)

Lists of submitters to the Health Committee for the CPMIP and IDCCR supplied by Parliamentary Information Services.(June 2017)

Mental Health Commission Crime and Mental Illness Fact Sheet three September 2004

Ministry of Health, email correspondence containing IDCCR statistics (13 June 2017)

Westlaw database search using the IDCCR as search term under legislation cited for period 1/1/16 – 10/6/17