

## Brief overview of the pathway to the IDCCR Act

If a person is charged with an imprisonable offence, and it is known or suspected that they may have an intellectual disability, then there are special avenues available for them under two statutes. The first is the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPMIP Act) and alternatives under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (IDCCR Act).

- (a) The first step in this process is to notify the court about concerns in relation to the person's intellectual functioning. Anyone can raise this concern at any time in the proceedings.
- (b) If concern is raised, there are a number of steps that the Court can then take:
  - The Court can approach the Court Liaison Staff, usually a Court Liaison Nurse (CLN), to complete a screen about fitness to stand trial. CLNs are nurses available in some New Zealand courts. The role of the CLN is to provide consultation and liaison services to the Ministry of Justice/Department of Corrections, the Court, the Police, and Community Mental Health Intervention teams.<sup>1</sup>
- (c) If the screen administered by the CLN indicates a level of concern about the person's ability to undergo the Court processes, the court can order a "fitness to stand trial" assessment under section 38 of the CPMIP Act [link CPMIP].<sup>2</sup> These orders for assessments are referred to local forensic services and are completed by a Health Assessor, usually a psychologist or psychiatrist with an understanding of mental health and/or disability issues.
- (d) If the first Health Assessor believes that the person is **fit to stand trial**, then the report goes back to the court. The court may take one of two actions. It can decide not to request the s.35 assessment and the person progresses through the criminal justice system according to usual corrections processes.
- (e) Alternatively, the court can request a further assessment via s.35 of the CPMIP Act. Such an approach is taken if the court requires further information about whether the person has an intellectual disability, whether they are at risk of reoffending and how such risk could be managed, and whether the person needs to be compelled to accept services as a way of managing risk.
- (f) If a second assessment is considered to be necessary, a referral is made to Forensic Coordination Services (Intellectual Disability) [FCS(ID)] and a Specialist Assessor then completes another assessment.
  - The outcome of this assessment may be that intellectual disability is confirmed, there is significant risk of reoffending, that this needs to be managed in specialist residential services and that legal compulsion is required. If this is the case they are made a "Care Recipient" under the IDCCR Act for up to three years (with six monthly reviews).

- Alternatively, the assessment could also find that the person does have an intellectual disability but there is no need for the person to be subject to the IDCCR Act. In such cases the person proceeds through usual correction processes.
  - It is also possible that the person will be found not to have an intellectual disability according to diagnostic standards, thus usual corrections processes apply.
- (g) If the first Health Assessor concludes that the person is **unfit to stand trial** the report is submitted to the court, and a second s.38 assessment also examining fitness is ordered. The court may request more than two s.38 reports if it deems that to do so is helpful to them.
- (h) Based on the two (or more) reports, the court decides if the person is first “responsible” for the alleged events and secondly “if they are unfit to stand trial”. If the answer to both of these issues is ‘yes’ then a Specialist Assessment under s.23 of the CPMIP Act [link] is called for.
- Under this process, the person has already been determined to have an intellectual disability by the court through the information gathered at the s.38 stages. Therefore, under s.23 the Specialist Assessor is required to provide information to the court about risk of further offending, what needs to be done about this risk, and whether compulsion to accept services to manage the risk is required.
  - If the Specialist Assessor advises that there is significant risk related concern, then the person may be made a Care Recipient under the IDCCR Act.
  - If the Specialist Assessor advises that there is no significant risk related concern, then the charges are likely to be discharged and no further processes occur.

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<sup>1</sup>Patsy-Jane Tarrant “An exploration of the role of the court liaison nurse within the New Zealand criminal courts” (DHSc, Auckland University of Technology, 2014) at 3.

<sup>2</sup> Fitness to stand trial requires a range of skills as described in R v Britz [2012] NZCA 606 at [104]. The issue was also addressed in R v Komene [2013] NZHC 1347 at [18] – [20], which referred to R v Britz.