**New Zealand’s Mental Health Act in Practice**

**Dawson, J. & Gledhill, K. (Eds.) (2013)**



# Contents

**Preface**

The Honourable Justice Susan Glazebrook

**Acknowledgments**

**Contributors**

**Main Abbreviations**

**Part I. Introduction**

John Dawson and Kris Gledhill

**Part II. The criteria for compulsion**

1. The Complex Meaning of ‘Mental Disorder’

John Dawson

2. Personality Disorder and the Mental Health Act

Richard Mullen

3. Risk and Compulsion

Kris Gledhill

4. Seriously Diminished Capacity for Self-Care

Matthew McKillop

**Part III. Review Procedures**

5. The Mental Health Review Tribunal

Nigel Dunlop

6. Implicit Factors for Discharge by the Mental Health Review Tribunal

Kate Diesfeld

7. District Inspectors: Watchdogs of Patients’ Rights

Katey Thom and Kate Prebble

8. Reflections on the Statutory Roles of the Director of Mental Health

David G Chaplow and Susanna Every-Palmer

9. Regulating the Detention of Mentally Incapacitated Adults Not Subject to the Mental Health Act

Sue Nightingale and Iris Reuvecamp

**Part IV. Treatment Without Consent**

10. The Role of the Responsible Clinician

Stephanie du Fresne

11. Mental Health Nursing and the Mental Health Act

Brian McKenna and Anthony J O’Brien

12. Should Involuntary Patients with Capacity Have the Right to Refuse Treatment?

Jeremy Skipworth

13. Mandatory Second Opinions on Compulsory Treatment

John Dawson, Pete Ellis, Paul Glue, David Goldsmith, Jessie Lenagh-Glue and Don A R Smith

**Part V. Cultural and Human Rights**

14. Māori and the Mental Health Act

Hinemoa Elder and Rees Tapsell

15. The Recovery of Compulsory Assessment and Treatment

Sarah Gordon

16. A ‘Rights’ Audit of the Mental Health Act

Kris Gledhill

17. Social Deprivation and Use of the Mental Health Act

Anthony J O’Brien

**Part VI. Collateral Legislation**

18. Further Reform of Unfitness to Stand Trial

Warren J Brookbanks

19. Adults with Incapacity: the Protection of Personal and Property Rights Act

Bill Atkin and Anna-Marie Skellern

20. The Intellectual Disability (Compulsory Care and Rehabilitation) Act

Anthony Duncan

21. Reform of the Alcoholism and Drug Addiction Act

Warren Young and Val Sim

**Index**

# Index

‘abnormal state of mind’ (see ‘mental disorder’)

advocacy services

Alcoholism and Drug Addiction Act 1966 (A&DA Act)

detention under

criteria for compulsion under revised law

incapacity and

justifications for intervention under

length of compulsion

problems with

reforms proposed

assessment

autonomy (see ethics)

best interests

burden of proof

Butler Report

capacity (or competence)

assessment of

coercion, effect on assessment

concepts of

criterion for compulsory treatment

Deprivation of Liberty Safeguards (see **DoLS regime**)

lack of (or incapacity)

Mental Capacity Act 2005 (UK) (see **MCA**)

MHA and

necessity doctrine and (see **necessity**)

presumption of

PPPR Act and (see **PPPRAct**)

rate of, among compulsory patients

care recipient (and see IDCCRA)

care as

detention of

numbers of

proportionality and

rehabilitation of

special care recipient

carers (see family and whānau)

children and young people

Code of Health and Disability Services Consumers’ Rights

generally

Right 7(4)

coercion

cognition, disorder of (see ‘mental disorder’)

common law

assault and battery

false imprisonment

necessity (see **necessity**)

negligence

trespass to the person

community treatment order (CTO)

features

prior writing on

statistics

use (or over-use) of

certification (and medical certificates)

clinical review

competence (see capacity)

complaint of breach of rights

Review Tribunal investigation (see **Review Tribunal**)

role of District Inspector (see **District Inspector**)

compulsory treatment

electroconvulsive therapy (see **ECT**)

entry into

exclusionary rules (s 4) (see **exclusionary rules**)

exit from (see **discharge**)

justifications for

medication (see **medication**)

over-use of

review of (see **clincial review**, **judicial reviews**)

scope of authority for, under MHA (see **second opinions**)

second opinions on (see **second opinions**)

compulsory treatment orders (CompTOs) (and see compulsory treatment)

criteria for (see **‘mental disorder’**)

community treatment orders (see **CTOs**)

detention under (see **detention**)

inpatient orders (see **inpatient order)**

right to refuse treatment (and see **human rights, rights of patients**)

renewal of

review of (see clinical review, judicial reviews)

treatment under (see **compulsory treatment**)

use for monitoring only

confidentiality

consent to treatment

assent as opposed to

electroconvulsive therapy (see **ECT**)

informed consent

medication (see **medication**)

psychosurgery (see **psychosurgery**)

consumers’ perspectives

need for research from

recovery model (see **recovery model**)

value of

Convention on the Rights of Persons with Disabilities (CRPD) (and see human rights)

court liaison services

courts

District (and Family) Court (DC, FC)

High Court (HC)

Court of Appeal (CA)

House of Lords (HL)

European Court of Human Rights (EctHR) (see **human rights**)

court reports

in MHA proceedings (see also **Responsible Clinician)**

in CPMIPA proceedings (see also **fitness to stand trial**)

criminal justice system

CPMIPA proceedings (see **fitness to stand trial**)

fitness (or unfitness) to stand trial or plead (see **fitness to stand trial**)

insanity defence

detention as special patient following acquittal

review of special status (see **Review Tribunal**)

role of Director of Mental Health (see **Director of Mental Health**)

prisoners

prison-to-hospital transfer (see **prison-to-hospital transfer**)

sentencing

sexual offences

CPMIPA (see criminal justice system, unfitness to stand trial)

dangerousness

imminence

predicting

preventive detention

proof, issues of

risk assessment

‘serious danger’

delusions (see ‘mental disorder’)

Deprivation of Liberty Safeguards regime (DoLS regime)(UK)

detention

acquittal on grounds of insanity, detention following

arbitrary detention

meaning of detention

principles in light of right to liberty (see **human rights**)

nurse’s emergency power of (s 111)

unlawful detention

diagnosis

compared with phenomenological approach

Diagnostic and Statistical Manual of Mental Disorders (DSM-IV or -5)

International Classification of Diseases (ICD-10)

reliability of (see **personality disorder**)

‘diminished capacity for self-care’

comparison with ‘serious danger’

relevance of NZBORA

subjective or objective test

relevance of social supports

proposal for reform

wide meaning

Director of Area Mental Health Services (DAMHS)

roles in general

role in second opinion process (see **second opinions**)

Director of Mental Health

advisory role

leave for special patients

other roles of the Office

oversight of special patients

oversight of restricted patients

powers of inquiry and inspection

relationship to other statutory officers

discharge (and see Review Tribunal, judicial hearings)

‘fit to be released from compulsory status’ (see ***Waitemata Health***)

interpretation of the standard governing

non-legal factors influencing

applicants’ written statements

insight (see **insight**)

necessity for compulsion (and see **necessity**)

participants at hearing

past as predictor of future

disclosure of information

health care records

to family and whānau (see **family and** **whānau)**

discrimination (and see human rights)

District Inspector

historical role

functions and role

advising patients

complaints

inspection

value of

visitation

drug abuse

Duly Authorised Officer (DAO) (and see mental health nurse)

electroconvulsive therapy (ECT) (see compulsory treatment, treatment)

legal requirements for under MHA

second opinion on (see **second opinions**)

Māori and (see **Māori**)

statistics re use

enduring powers of attorney

ethics

autonomy, respect for

beneficence

civil commitment and

legal requirements and

non-maleficence

paternalism

European Convention on Human Rights (ECHR) (see human rights)

European Court of Human Rights (see courts)

evidence

expert

rules of

evidential sufficiency hearing (see special hearing, fitness to stand trial)

exclusionary rules (s 4)

fair hearing, entitlement to

presence of the patient

requirements of

need for an ‘independent tribunal’

family and whānau (and see Māori)

consultation with (s 7A)

decision-making by

disclosure of information to

support from

fitness to plead (see fitness to stand trial)

fitness to stand trial (or plead)

basic or more sophisticated competencies

decisional competence

disposition of persons found unfit

elements of

hearings about (and see **special hearing**)

intellectual disability and (and see **IDCCRA**)

‘mental impairment’

*mens rea* elements (see **special hearing)**

‘raising the issue’

‘real and substantial question’ test

timing of decision

unmeritorious applications

force

forensic psychiatry

Guidelines to the MHA

habeas corpus

*HL v United Kingdom* (2004) ECHR 445508/99

human rights

arbitrary detention and (see **detention**)

breaches of

complaint mechanisms

compulsory treatment and (and see **compulsory treatment**)

discrimination and

Convention on the Rights of Persons with Disabilities (see **CPRD**)

European Convention on Human Rights (see **ECHR**)

International Covenant on Civil and Political Rights

International Covenant on Economic Social and Cultural Rights

New Zealand Bill of Rights Act 1990 (see **NZBORA**)

resources and

right not to be subject to inhuman or degrading treatment

right to liberty

right to life

right to refuse treatment (see **compulsory treatment**)

state duties to protect

United Nations Human Rights Committee

United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care

Universal Declaration of Human Rights

hybrid orders

incapacity (or incompetence) (see capacity, informal patients)

incompetence (see capacity, informal patients)

English law on

legal justification for detention of (and see **necessity**)

need for reform of law about

oversight of decisions on behalf of

safeguards on rights

information disclosure (see family and whānau)

inpatient orders

criteria for (see CompTOs, ‘mental disorder’)

features

statistics on use

use of

inquisitorial approach

insanity defence (see criminal justice system)

insight (and see discharge)

intellectual disability (and see IDCCRA)

adaptive functioning

assessment of

civil legislation

definitions

diagnosis of

fitness to stand trial and (see **fitness to stand trial**)

intelligence quotient (IQ)

risk assessment approach

Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (IDCCRA)

care recipients (see **care recipients**)

compulsory care orders (CCOs)

facilities

history of the IDCCR Act

interface with other legislation

rehabilitation under

statutory roles and functions

*V v RIDCA Central*

intellectually disabled offenders (see criminal justice system)

involvement hearing (see special hearing)

judicial hearings

evidence at

frequency of

judicial review proceedings (in High Court)

prior writing on

Responsible Clinician (RC) and (and see **RC**)

section 16 hearings

timing of

reports for (see **court reports**)

therapeutic implications of

judicial inquiry

in the High Court (s 84)

leave

legal representation

Māori

concepts of capacity and

care recipients and

community treatment orders and

cultural competencies

cultural perspectives

culturally appropriate treatment

ECT and (and see **ECT**)

evidence base, development of

identity and psychiatric rehabilitation

language

over-representation of

potential for bias in legal processes

research imperatives

respect for cultural identity

Review Tribunal and

social deprivation, use of MHA and

whānau consultation (see **family and whānau**)

medication (pharmacotherapy)

regulation under MHA (and see **second opinions**)

clozapine

new generation antipsychotics

second opinions on (see **second opinions**)

side-effects

*mens rea* (see fitness to stand trial)

Mental Capacity Act 2005 (UK) (MCA) (and see capacity and DoLS)

‘mental disorder’ (s 2)

‘abnormal state of mind’

Aubrey Lewis and

bipolar disorder

clinical and legal concepts of

cognition, disorder of

‘continuous or intermittent’

definition

legal

psychiatric

‘dynamic’ approach

delusions

depression

diminished capacity for self-care (see ‘**diminished capacity for** **self-care’**)

eating disorders

exclusionary provisions (see **exclusionary rules**)

‘of such a degree that’

mood, disorder of

perception, disorder of

personality disorders (see **personality disorders**)

schizophrenia

self-care (see ‘**diminished capacity for** **self-care’**)

‘serious danger’ to health or safety (see **dangerousness**)

‘seriously diminished capacity’ (see **‘diminished capacity for self-care’**)

social deviance and

social factors and

treatability

volition, disorder of

Mental Health Act 1969 (MHA 69)

process under

changes to, under MHA 1992

history

Mental Health Act 1983 (UK) (MHA 1983)

Mental Health Act Commission (UK) (MHAC)

mental health nurses

DAMHS, as

Duly Authorised Officers, as (see **DAO)**

emergency power of detention (s 111) (see **detention)**

procedural justice and

Responsible Clinicians (RCs), as

roles under MHA

second health professional at hearings

therapeutic relationships and MHA (see **therapeutic relationships)**

training needs

Mental Health Review Tribunal (see Review Tribunal)

mentally disordered offenders (see criminal justice system; restricted patients; special patients)

Minister of Health

change of restricted patient status

discharge of special patients

leave for special patients

review of special patients

multi-disciplinary decision-making

natural justice (see fair hearing)

necessity

criteria for a compulsory treatment order, aspect of (see **CompTOs**)

emergency powers, under doctrine of

informal patients, justification for detention (see **informal patients**)

New Zealand Bill of Rights Act 1990 (NZBORA) (see also human rights)

arbitrary detention (see **detention**)

fair hearing, right to (see **fair hearing**)

justified limitations on rights

interface with MHA

interpretation, guide to

reference to in courts or Tribunal

right to refuse treatment (see **compulsory treatment**)

nurses (see mental health nurses)

Pacific Island people

paternalism (see ethics)

personality disorders (see also ‘mental disorder’)

aetiology and diagnosis

borderline

categorised as mental disorder

definition

ethics of compulsory treatment

interface with definition of ‘mental disorder’

first limb

second limb

preventive detention

‘treatability’

treatment

pharmacotherapy (see medication)

police

assistance of

powers of arrest

preventive detention (and see detention)

prison-to-hospital transfer

prisoners (see criminal justice system)

privacy

Privacy Act 1993

Health Information Privacy Code 1994

procedural justice (see: fair hearing, mental health nurses)

property

proportionality (see care recipients)

Protection of Personal and Property Rights Act 1988 (PPPR Act)

application to ‘mental disorder’

fundamental principles

interface with MHA

‘least restrictive intervention’

personal orders

presumption of competence

property manager

welfare guardian

psychologists (and psychology)

psychopathy (see personality disorders)

psychosis (see ‘mental disorder’)

psychosurgery

*RCH, Re* (see *Waitemata Health v Attorney-General*)

reclassification (see special patients)

recovery model (and see consumer persectives)

reform of MHA

religious beliefs

reports (see court reports)

research (and see Māori, consumer perspectives)

current research

need for further research

resourcing issues

inadequate resources leading to breach of rights (see **human rights**)

Responsible Clinician (RC)

changing views of

clinical reports (see **court reports**)

compulsory treatment and (and see **compulsory treatment**)

consultation with family and whānau (see **family and** **whānau**)

differing views of

judicial hearings and (see **judicial hearings**)

roles of

second opinion on treatment, seeking (see **second opinions**)

therapeutic versus coercive roles (and see **therapeutic relationships**)

restraint

restricted patients (and see Director of Mental Health)

review

clinical review (see **clinical review**)

review by a court (see **judicial hearings**)

Tribunal review (see **Review Tribunal**)

Review Tribunal (and see judicial hearings)

application for review

administration

discharge from compulsory status (and see ***Waitemata Health***)

discharge rates

jurisdiction

legal representation

membership

powers and role

publication of decisions

restricted patient review (and see **restricted patients, Director of Mental Health**)

right to apply

special patient review (and see **special patients, Director of Mental Health**)

statistics about

timing and speed of review

Tribunal procedure

decisions: reasons for

examination by medical member

hearings

independent psychiatrist report

interview with patient

rights of patients (and see human rights, NZBORA)

appropriate treatment

company and seclusion (and see **seclusion**)

cultural identity (see **Māori**)

fair process (see **fair procedure**)

information

language (and see **Māori**)

Māori patients (see **Māori**)

patients’ rights, general approach

refusal of treatment (see **compulsory treatment**)

remedies for breach of rights (and see **NZBORA**)

review (see **clinical review, judicial hearings, Review Tribunal**)

risk assessment (see dangerousness)

Royal Australian and New Zealand College of Psychiatrists

schizophrenia (see ‘mental disorder’)

seclusion

features

statistics on

use of

second opinions, on treatment (ss 59, 60)

electroconvulsive therapy (see **ECT**)

forms

legal framework

methods for study of

Responsible Clinician (RC) and

reform of

second opinion psychiatrist (SOP)

statistics on

section 9 hearing (see: special hearing)

section 16 hearings (see judicial hearings)

self-care (see ‘diminished capacity for self-care’)

self-harm

sentencing (see criminal justice system)

‘seriously diminished capacity for self-care’ (see ‘diminished capacity for self-care’)

sexual offences (see criminal justice system)

sexual preferences (see exclusionary rules)

side-effects (see medication)

social deprivation

definitions of

Māori, use of MHA and (see **Māori**)

measuring deprivation

relationship with use of MHA

special hearing (and see CPMIPA, unfitness to stand trial)

adversarial or inquisitorial nature

application of NZBORA to

elements to be proved (and *mens rea)*

forensically demanding

reform

standard of proof

timing of

special patients (and see Director of Mental Health)

capacity to consent to treatment among

compulsory treatment (see **compulsory treatment**)

leave for (see **leave**)

prisoner transferred to hospital (see **prison-to-hospital transfer**)

review of status (and see **Review Tribunal**)

standard of proof

substance abuse (see A&DA Act, exclusionary rules)

suicide

therapeutic jurisprudence

therapeutic relationships (and see mental health nurses, RC)

transfer from prison-to-hospital (see prison-to-hospital tranfer)

‘treatability’ (and see personality disorders)

treatment

appropriateness

compulsory (see compulsory treatment)

culturally inappropriate (see **Māori**)

medication (see **medication**)

no adequate benefit

personality disorders (see **personality disorders**)

psychosurgery (see **psychosurgery**)

right to receive

right to refuse (see **compulsory treatment**)

seclusion (see **seclusion**)

second opinion (see **second opinions**)

side-effects (see **medication**)

Treaty of Waitangi

unfit to stand trial or plead (see fitness to stand trial)

urgent treatment (see detention, mental health nurses, necessity)

victims

volition (see ‘mental disorder’)

*Waitemata Health v Attorney-General* [2001] NZFLR 1122

women