

# A Care Manager's Dilemma: Balancing Human Rights with Risk Management under the IDCC&R Act (2003)

Kate Prebble

University of Auckland

# Overview

- Historical background to intellectual disability services in NZ
- Policies & philosophies underpinning intellectual disability services
- IDCC&R Act (2003)
- Findings of Care Manager study
- Discussion
- Implications for practice

# History & Context

- History & philosophy of intellectual disability services in New Zealand

## 1. Medical model of disability

*'Belittling norms that relieve impaired persons from social obligations yet demand they abide by professional medical judgment. Both responsibility and liberty are thereby reduced'*

Samaha (2007), p.1257)

# Winds of Change in NZ

- IHCPA - 1949
- Normalisation – 1950s
- Deinstitutionalisation – 1980s
- Social Model of Disability
  - shifts the cause of the problem from the individual to a society that has failed to provide adequately for the needs of its disabled citizens

# Social Model & ID Policy

- **NZ Disability Strategy (2001)** – based on social model
- **‘To have an ordinary life’ (2003)** “a new way of thinking ... aspirations as citizens and how these can be better achieved”
- **UNCRPD (2006)** – ‘to fully enjoy all human rights and fundamental freedoms’

# Mental Health (CAT) Act, (1992)

- created a legal definition of ‘mental disorder’
- specifically excludes people with intellectual disability (ID)
- offenders with intellectual disability were no longer covered by legislation

Intellectual Disability  
(Compulsory Care &  
Rehabilitation) Act 2003  
&  
Criminal Procedure  
(Mentally Impaired Persons)  
Act 2003,

# IDCC&R Act (2003)

- Allows courts to make a compulsory care order for people with ID who are charged with, or convicted of an imprisonable offence
- Up to 3 years duration, with extensions
- Secure or supervised care

# IDCC&R Act (2003) - roles

- Specialist assessor
- Care co-ordinator

And

- **Care manager**

Legally entrusted with the care & rehabilitation of individual care recipients

# The Care Manager Study

## Aim

- To explore how the care manager role under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 is working in practice.



# Methodology & Methods

## Qualitative Descriptive

- Individual interviews (semi-structured)
  - 22 care managers
- Focus groups
  - care managers follow-up
  - kaupapa Maori services
  - other disability professionals



# Selected Findings: Dilemma

- Risk (compulsory care)

versus

Rehabilitation (rights)

# 1. 'It's about managing risk'.

*'Safety is paramount? Absolutely. Absolutely – to the client and to the community. Safety in terms of offence to other people but also because the result of that offending has an impact for the client as well so it's to protect the client's behaviour from themselves and others'.*

## 2. Balancing risk with rehabilitation

*‘This is a risk-averse environment but sometimes you’ve got to take a risk to test things out so that can be a tension’.*

- *‘... I kind of felt that it was me out on a limb, but I see that as my role ... We’ve got to allow people to take risks, but calculated risks’.*

### 3. Role ambiguity

- *'In a way you're the custodian as well as the therapist and those two roles don't sit very well together'*
- *We're nurses – our approach is caring – though the people we have at the moment need more prison officer-like people. We're not very good at that.*

## 4. Philosophy incompatibility

- *'... you have services that have been operating under their own philosophies for a long time and at some point, the requirements of either the CARP [care plan] or the Act are at odds with the services' philosophy and methods ... (CM7)*

# Philosophy incompatibility cont.

*'Compulsory care ... is not something that we ever thought we would deliver on. Our organisation's statement is "live the dream, tell the story". This means people have more choice around all aspects of their lives. With this piece of legislation, we do have to take away people's choice if it places them in danger or places the community at risk'*

# 5. Care recipient characteristics

## A. Mainstream clients – behavioural issues

*I think some of those people are under orders because they're difficult, not because they've committed a crime. ... it's that group of people who've always presented challenges to services ... and they've now ended up with us.*

# Mainstream clients cont.

- *'... a couple of people who were initially placed under orders, if there'd been a good assessment ... and they'd been well represented by a lawyer, they would never have come under the Act. I think their human rights were violated'.*

# Care recipient characteristics

## **B. Street-savvy youth**

*... in the old days it used to be ... your ID client was the nice little person with Downs Syndrome who ... wasn't really too much of a problem.... Okay, now your care recipient is stereotypically, ... your 17 to 30 year old male ... whose lived a street wise life, whose never been involved ID services before ...*

# Street-savvy youth contd.

- *It's not mainstream clients ... it's some guy off the side of the road who has been independent enough to manage. You get a lot that have a lot of petty crimes – theft and burglary – and it's just accumulated over the years and then, finally, [someone says] “Hello – he's got an ID”.*

## 6. Questionable status

- *... a number of young men come through who have committed quite serious offences ... some of whom I'm not sure would've fallen into the intellectual disability category, all of whom have come from very fragmented backgrounds ...'*

# Suitable for disability sector?

- *For those people who are street wise and making bad choices because they really don't give a shit about the rest of the world, they're not so good in the disability sector ... the community includes ... the staff and the other clients, um and the level of assaults that happen... from some of these clients is just horrendous .... (CM13)*

## 7. Length of care order

- *Some of the orders that I've seen have been quite extreme for the level of offending that the client has been sentenced for...*

*On the other hand, lengthy orders do provide a decent period of time in which you can kind of work alongside the client to try and work on rehabilitation.*

# Length of order

*'In one year or 6 months you can get them through the offending piece and they've done their time as far as the judges are concerned. However, they're still not ready for the community yet – they're not quite integrated enough to just be left alone. I really struggle...'*

# Discussion

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## Tensions within disability policy

- Individual versus societal problem
- Normalisation
- Rehabilitation AND compulsory care

# Recommendations

1. Training & support for care managers
2. Acknowledgment of the adjustment required for services & personnel
3. Development of specialist services, e.g. Youth
4. Evaluate Act

*‘I’m acutely aware in terms of the levels of security that this is it – this is the last place that these gentlemen come to. At times, people’s freedoms and choices are in my hands ...’*