

# Brookers Family Law – Incapacity

16/10/19 Update Summary

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## CASES

Commentary has been included on the following cases:

### MENTAL HEALTH (COMPULSORY ASSESSMENT AND TREATMENT) ACT 1992

*R v Brackenridge* [2019] NZHC 1004, [2019] NZAR 932: “disease of the mind” – relationship to drug induced psychosis – disease of the mind not defined and any precise or comprehensive judicial definition undesirable – was a question of whether the defendant’s state of mind at the time of offending diverged from what was presumed normal – effect was to render person incapable of understanding the nature of the act and whether it was morally wrong: [MH2.13.01], [MH2.27.13].

### PROTECTION OF PERSONAL AND PROPERTY RIGHTS ACT 1988

*Dodssuweit v Olivier* [2019] NZHC 1226: principles governing capacity were well settled – where lack of capacity is raised as a tenable issue, the burden of proving capacity lies on the party seeking probate of the will – principles governing testamentary capacity set out – issues that a medical expert will take into consideration in deciding whether a person has the necessary capacity set out: [PPIntro.07], [PP54.01], [PP94.02].

*Re Crowley* [2019] NZHC 1450: requirements for establishing testamentary capacity were not the same as those for executing an EPA: [PPIntro.07].



## SUBSTANCE ADDICTION (COMPULSORY ASSESSMENT AND TREATMENT) ACT 2017

*Waitemata District Health Board v FP* [2019] NZFC 2830: criteria for compulsory treatment – criteria for making an order – committal criteria governing entry and exit are deliberately narrow, limiting detention to severe cases of substance abuse – not intended to deal with unwise use or abuse, nor designed to be selectively used for those who do not present with co-existing problems or a criminal history – designed for those for whom substance abuse is so problematic it becomes life threatening, this cohort will include people with co-morbidities, including mental health issues, family violence and other social harms: [SA7.01].

*Bay of Plenty District Health Board v SP* [2018] NZFC 6356: severe substance addiction – indicators – repeated admission to hospital, social chaos and family concerns may all indicate a severe substance addiction – to satisfy test for capacity there has to be impaired capacity to make informed decisions about treatment for the addiction – criteria are not mutually exclusive, must be satisfied in total: [SA8.01].

*Waitemata District Health Board v FP* [2019] NZFC 2830: agreement to provide service – approved provider cannot pick and choose to whom they will provide treatment – fact that a potential client may be upsetting and potentially abusive to staff as a result of head injury and problems in managing moods was not enough to decline to accept someone given that such difficulties frequently co-exist with severe substance addictions: [SA30.01].

*McBride v BB* [2019] NZFC 2596: obligation to attend treatment centre – approved provider is someone who has either been approved under s 92 or has been certified under the Health and Disability Services (Safety) Act 2001 to provide mental health services – where there is no treatment centre in a particular area then the person cannot be compelled to attend by a compulsory treatment order, attendance is voluntary: [SA38.01].

*Waitemata District Health Board v FP* [2019] NZFC 2830: designation of service – in order to demonstrate a person is deemed an approved provider, they need to demonstrate they could manage the complex physical, psychological, emotional, cultural and spiritual needs that people under the Act would present with: [SA92.01].

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