ORDER PROHIBITING PUBLICATION OF NAME, ADDRESS, OCCUPATION AND IDENTIFYING PARTICULARS OF THE APPELLANT.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 95/2024
[2025] NZSC 119

BETWEEN	T (SC 95/2024) Appellant
AND	TE WHATU ORA HEALTH NEW ZEALAND Respondent

Hearing:	13 March 2025
Court:	Glazebrook, Ellen France, Williams, Kós and Miller JJ
Counsel:	A M S Williams and K N Stitely for Appellant B Hawes and A M Harvey for Respondent K Laurenson and I M C A McGlone for Attorney-General as Intervener
Judgment:	16 September 2025

JUDGMENT OF THE COURT

A **The appeal is dismissed.**

B **We make an prohibiting publication of the name, address, occupation and identifying particulars of the appellant.**

REASONS
(Given by Glazebrook J)

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Introduction

[1] Mr T faced five charges of sexual violation by unlawful sexual connection and one charge of obtaining by deception.[1] He was found unfit to stand trial on 4 April 2024. On 5 July 2024 he was held to be involved in all but one of the charges.[2] On the same day, Mr T was remanded to a secure facility under s 23(2)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPMIP Act) for inquiries to be made under s 23(1) as to the most suitable method of dealing with him.

[2] Section 23(4) of the CPMIP Act requires such inquiries to be completed as quickly as practicable and, in any event, within 30 days after the s 23(1) order was made. That 30-day period expired on 5 August 2024,[3] and Mr T then applied to the High Court for a writ of habeas corpus.[4] On 8 August 2024, Dunningham J declined

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1 The charges were laid in June and November 2022 and February 2024.
2 *R v [T]* [2024] NZDC 15391.
3 See below n 38.
4 See Habeas Corpus Act 2001, s 6. This was the second of two such applications: see below at [33].

Mr T's habeas corpus application.[5] This decision was upheld (but for different reasons) by the Court of Appeal.[6]

[3] Leave to appeal was granted by this Court on 25 September 2024.[7] The approved question is whether the Court of Appeal was correct to dismiss the appeal. On 3 December 2024 the Attorney-General was given leave to intervene.

[4] The issues in the appeal are whether Mr T should have been released at the end of the 30-day period set out in s 23(4) of the CPMIP Act, or whether he could still be detained, either under s 23 of the CPMIP Act or, as the Court of Appeal held, under ss 168 and 169 of the Criminal Procedure Act 2011 (CPA).

[5] Before turning to those issues, we first set out the legislative background and address the factual background in more detail. We then summarise the decisions in the Courts below and the submissions in this case.

Legislative background

[6] In the following sections, we summarise the processes under the CPMIP Act for determining a defendant's fitness to stand trial and for determining the most suitable method of dealing with a defendant found unfit to stand trial or a person acquitted on account of insanity. We include discussion of the legislative history where relevant. We also summarise the provisions in the CPA relied on by the respondent and the intervener. The relevant provisions are set out in full in the appendix.

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5 *[T] v District Court of New Zealand* [2024] NZHC 2218 (Dunningham J) [HC judgment].

6 *[T] v Te Whatu Ora Health New Zealand* [2024] NZCA 390 (Goddard, Thomas and Cooke JJ) [CA judgment].

7 *[T] v Te Whatu Ora Health New Zealand* [2024] NZSC 125 (Glazebrook, Ellen France and Williams JJ). In that leave decision, this Court said that the fact it had granted leave did not mean the scheduled disposition hearing should be adjourned: at [2]. That hearing was subsequently held on 18 October 2024 before Judge Elkin, who ordered that Mr T be made a care recipient under s 25(1)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 [CPMIP Act]: *R v [T]* [2024] NZDC 25773 [DC disposition decision]. There is therefore no longer an issue as to the lawfulness of Mr T's continued detention. This meant that there was no need for this appeal, despite being a habeas corpus appeal, to be accorded priority over other court business: see Habeas Corpus Act, s 17(1A) and (2).

Fitness to stand trial process under the CPMIP Act

[7] Under the CPMIP Act, as originally enacted, if a question arose as to whether a defendant was unfit to stand trial, the court first had to decide, on the balance of probabilities, whether the defendant was involved in the offence: that is, decide whether or not the evidence against the defendant sufficed "to establish the defendant caused the act or omission that forms the basis of the offence with which the defendant is charged".[8]

[8] If satisfied about the defendant's involvement, the court, after reviewing the evidence of two health assessors, then had to decide whether the defendant was mentally impaired. If satisfied that was the case, the court, after hearing from the parties and giving them an opportunity to present evidence, had to decide on the balance of probabilities whether or not the person was fit to stand trial.[9]

[9] In 2018 the CPMIP Act was amended so that the decision on fitness to stand trial (now under s 8A) precedes the involvement hearing (under s 10 in cases where, as in this case, the issue of fitness arises before trial).[10]

Section 23 of the CPMIP Act

[10] Section 23(1) provides that, when a person is found unfit to stand trial or is acquitted on account of insanity, the court must order inquiries to be made to determine the most suitable method of dealing with the person (disposition) under s 24 or s 25.[11]

[11] Section 23(2) provides that, for the purpose of making the above disposition inquiries, the court must make it a condition of a grant of bail that the person go to a

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8 CPMIP Act, s 9, repealed by s 126 of the Courts Matters Act 2018.

9 CPMIP Act, s 14, repealed by s 131 of the Courts Matters Act.

10 For a discussion of the previous scheme where the involvement hearing preceded the decision on fitness to stand trial, and the issues with that scheme, see Warren Brookbanks "The Development of Unfitness to Stand Trial in New Zealand" in Ronnie Mackay and Warren Brookbanks (eds) *Fitness to Plead: International and Comparative Perspectives* (Oxford University Press, Oxford, 2018) 127 at 137–138 and at 139 citing *R v Te Moni* [2009] NZCA 560 at [96].

11 Section 24 deals with detention as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992 [MHCAT Act] or special care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 [IDCCR Act]. Section 25 deals with other orders: a decision that the person be treated as a patient under the MHCAT Act; a decision for care under the IDCCR Act; a decision not to make an order if the person is liable to be detained under a sentence of imprisonment; or immediate release.

place designated by the court for the purpose of the inquiries or remand the person to a hospital or a secure facility. A "secure facility" is as defined in s 9(2) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (IDCCR Act).[12]

[12] Section 23(3) provides that, notwithstanding any provisions in the Bail Act 2000, the need to protect the public must be the "paramount consideration" when deciding whether to grant bail.

[13] Section 23(4) provides that the inquiries under subs (1) "must be completed as quickly as practicable and, in any event, within 30 days after the date of the order under which the inquiries are made".

[14] Section 23(5) provides that a person with an intellectual disability must be assessed under Part 3 of the IDCCR Act during the period in which the subs (1) inquiries are made.

[15] It is significant that, when the CPMIP Act was amended to reverse the order of the involvement hearing and the finding on fitness to stand trial,[13] no amendment was made to s 23.

Predecessor to s 23 of the CPMIP Act

[16] The predecessor provision of s 23 of the CPMIP Act was s 115 of the Criminal Justice Act 1985 (CJA). Section 115(1) relevantly provided that, if a person was found to be under disability or was acquitted on account of insanity, the court shall make an order detaining the person as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992. Under s 115(2), if the court was satisfied after hearing medical evidence that "it would be safe in the interests of the public", the court could instead make an order that the person be detained in a hospital as a patient, be released, or, where the person was subject to a sentence of imprisonment, could decide not to make any order.

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12 CPMIP Act, s 4(1) definition of "secure facility".
13 Courts Matters Act, Part 4 Subpart 6.

[17] Section 115(4) provided that, instead of exercising the powers under subss (1) and (2) immediately, the court could:

> … remand the person to a hospital, for any period not exceeding 7 days, for the purpose of making enquiries to determine the most suitable method of dealing with the case pursuant to this section.

Legislative history of s 23 of the CPMIP Act

[18] The provisions that became the CPMIP Act formed part of the Criminal Justice Amendment Bill (No 7) 1999 before being separated to form a standalone Act.[14] As originally introduced, when a person was found unfit to stand trial or was acquitted on account of insanity, proposed s 115 provided that "the court may from time to time remand the person to a hospital or secure facility for a period not exceeding 30 days" for inquiries to be made as to the most suitable means of disposition.[15] The explanatory note to the Bill stated that proposed s 115 corresponded to s 115(4) of the CJA but extended the period of remand from seven days to 30 days.[16]

[19] The Bill was further amended after being referred to the Health Committee. The Committee unanimously recommended amending proposed s 115 to *require* the person to be remanded to a hospital or secure facility for the purpose of the inquiries as to disposition.[17] The Committee also recommended amending proposed s 115 to provide that, during the inquiry period, any person with an intellectual disability must be assessed under Part 3 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2001.[18] The Committee further recommended amending proposed s 115 to require the inquiries to "be completed as quickly as practicable".[19]

[20] The proposed section was then further amended through a Supplementary Order Paper to allow a person to be granted bail for the purposes of making the inquiries but with the need to protect the public as the paramount consideration before

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14 Supplementary Order Paper 2003 (161) Criminal Justice Amendment Bill (No 7) 1999 (328-2) [SOP 2003 (161)] (explanatory note) at 44. See also cl 1.

15 Criminal Justice Amendment Bill (No 7) 1999 (328-1).

16 (Explanatory note) at ix.

17 Criminal Justice Amendment Bill (No 7) 1999 (328-2) (select committee report) at 7.

18 Clause 16.

19 Clause 16. The Committee said "[t]his will emphasise that assessments should not routinely be dragged out for 30 days; they should be completed speedily and effectively": (explanatory note) at 7.

bail was granted.[20] The Supplementary Order Paper version is what is now s 23 of the CPMIP Act.

Duration of detention under s 24 of the CPMIP Act

[21] Section 30(1) of the CPMIP Act specifies that the maximum period that a defendant who has been found unfit to stand trial can be detained under s 24 as a special patient or special care recipient is 10 years from the date the s 24 order was made, if the defendant was charged with an offence that is punishable by imprisonment for life. If not, the maximum period of detention is a period from the date of the s 24 order equal to half the maximum term of imprisonment to which the defendant would have been liable if convicted for the offence with which they were charged.

[22] If, before the expiry of the maximum term in s 30(1), a certificate is given under either the Mental Health (Compulsory Assessment and Treatment) Act or the IDCCR Act to the effect that the defendant is no longer unfit to stand trial, under s 31(2) of the CPMIP Act, the Attorney-General is required either to direct that the defendant be brought before the court or that they be held as a patient or care recipient.[21] An order made under s 24 continues in force until such a direction is made.[22]

[23] By contrast, a person who has been acquitted on account of insanity can be detained as a special patient or a special care recipient in accordance with an order under s 24 but there is no maximum period specified. Section 33 provides that, in such circumstances, the s 24 order continues in force until the Minister of Health makes a direction that the defendant is to be held as a patient or care recipient or discharged.

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20 SOP 2003 (161), above n 14, (explanatory note) at 44. See also at 10–11.

21 The remaining processes in s 31(3)–(4) are not relevant for our purposes.

22 CPMIP Act, s 30(3). This is subject to the ability of a High Court judge to order an inquiry into a patient (including a special patient) or a special care recipient and to make orders as to disposition following such inquiries, and also to the power of the Minister of Health to authorise and direct the removal of a patient (including a special patient) from New Zealand if it appears to the Minister that such removal would be for that patient's benefit: CPMIP Act, s 30(4); MHCAT Act, ss 84 and 128 and s 2(1) definition of "patient", para (c); and IDCCR Act, s 105.

Sections 168 and 169 of the CPA

[24] Section 168(1) of the CPA provides that, if a proceeding is adjourned, a judicial officer or registrar, in accordance with any applicable provisions of the Bail Act, may allow the defendant to go at large, grant bail under the Bail Act or, if the defendant would be liable to a sentence of imprisonment on conviction or if the defendant has been arrested, remand the defendant in custody.[23]

[25] Section 168(4) provides that, where a defendant is remanded in custody, a warrant must be issued for the defendant's detention in a prison for the period of the adjournment; pending and during the defendant's trial;[24] or pending and during sentencing.

[26] Section 167(1) allows "any proceeding" to be "adjourned by a judicial officer to a time and place then appointed".[25] Proceeding is undefined.

[27] Section 169(1) provides that, instead of issuing a warrant under s 168(4), the court may make an order for the defendant's detention in a hospital or secure facility "pending the defendant's trial". Before making such an order, the court must be satisfied, on the production of a certificate or certificates by two health assessors, that the defendant is mentally impaired and that their mental condition requires that, in their own interests, they should be detained in a hospital or secure facility instead of a prison.[26]

Factual background

Period up to the involvement hearing

[28] Mr T was charged with some of the offending in 2022 and was granted electronically monitored bail to his parents' home. Mr T's lawyer obtained an

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23 While the meaning of "arrested" in s 168(1) of the Criminal Procedure Act 2011 [CPA] is not entirely clear, it cannot give licence to detain a person without charge.

24 This encompasses both judge-alone and jury trials: CPA, s 5 definition of "trial".

25 Section 167(2) also provides that a registrar may adjourn any proceeding before the trial if the defendant is not in custody.

26 Section 169(2).

independent psychologist's report, dated 18 August 2023, which opined that Mr T was unfit to stand trial.

[29] Mr T breached bail in September 2023 by cutting off his electronic monitoring bracelet. As a result, he was remanded in custody to Christchurch Men's Prison. The Court received a s 38 assessment report, dated 13 December 2023, opining that Mr T was unfit to stand trial. His remand in custody was renewed on 15 December 2023.

[30] The Court then received an independent psychologist's report, this time obtained by the prosecutor and dated 6 March 2024. It also opined that Mr T was unfit to stand trial.

[31] As noted above, on 4 April 2024, the Court found Mr T unfit to stand trial.[27] Mr T continued to be remanded in custody pursuant to the 15 December warrant.

[32] On 23 April 2024, Mr T sought bail on the grounds that he had been found unfit to stand trial and that, under the CPMIP Act, he could no longer be remanded in custody. That application was declined by Judge Robinson in a decision issued on 24 April 2024,[28] and a further application was dismissed by Judge Couch on 26 April 2024.[29]

[33] Mr T then applied to the High Court for a writ of habeas corpus. He asserted that he was being unlawfully detained in prison contrary to s 23(1) and (2) of the CPMIP Act. That application was granted by Dunningham J on 29 April 2024, with reasons following on 30 April 2024 (first habeas corpus decision).[30] She noted that "no clear thought appears to have been given" leading up to the 2018 amendments "to amending [s 23] as well to deal with the situation once a finding of unfitness is made,

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27 Above at [1]. See also *[T] v District Court of New Zealand* [2024] NZHC 1017 [first habeas corpus decision] at [2].

28 *R v [T]* [2024] NZDC 9198.

29 *R v [T]* DC Christchurch CRI-2024-009-928, 26 April 2024.

30 Dunningham J granted the application in *[T] v District Court of New Zealand* [2024] NZHC 970. She gave her reasons the next day in the first habeas corpus decision, above n 27.

but before inquiries as to disposition are able to be made".[31] She nevertheless held that, pursuant to s 23(2) of the CPMIP Act, Mr T should be remanded to a hospital or secure facility. She said:[32]

> … I am satisfied that an individual who has been found unfit to stand trial should not remain in prison. They are no longer at risk of being found criminally liable and it is not appropriate they be held in custody. Consistent with the original intent of the legislation and consistent with the New Zealand Bill of Rights Act, the options set out in s 23(2)(b) should apply at the point a person has been found unfit to stand trial, notwithstanding they appear to apply only once the Court is in a position to make inquiries into disposition.

[34] Between 2 and 16 May 2024 four orders were made in the District Court under s 23 of the CPMIP Act remanding Mr T to Hillmorton Hospital in Christchurch. On 15 and 16 May 2024 the involvement hearing was held, and on 14 June 2024 a fifth s 23 order was made.

[35] On 5 July 2024 the judgment on involvement was issued. As noted above, Mr T was found to be involved in all but one of the charges.[33]

Period after the finding of involvement

[36] On 5 July 2024 a sixth s 23 order was made by the District Court. On 1 August 2024, Mr T and his family were interviewed by a specialist assessor for the purpose of the s 23 inquiries. On 2 August 2024, Mr T underwent a cognitive assessment with the assessor. That same day, the matter was called again. Judge Hix determined that Mr T could continue to be held in a secure facility and made a seventh s 23 order extending Mr T's detention to 26 September 2024, the next hearing date provided by the Court.[34] On 3 August 2024, Mr T was again interviewed by the specialist assessor.

[37] On 5 August 2024 the 30 days from the sixth s 23 order had expired.[35]

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31 First habeas corpus decision, above n 27, at [29]. Dunningham J explained that s 23 in its current form "reflect[ed] the fact that, prior to 2018, a finding of unfitness was made after an involvement hearing". She considered that there was a tension in the section's wording in that it says it applies once a person is found unfit to stand trial but "anticipates that this is for the purpose of making inquiries as to disposition": at [29].

32 At [30].

33 Above at [1].

34 *R v [T]* DC Christchurch CRI-2022-009-4140, 2 August 2024 at [16]–[18] and [20].

35 See below n 38.

[38] Although on its face s 23(1) applies "when a person is found unfit to stand trial", both parties submit that s 23 only applies once the person has been found to be unfit to stand trial and also involved in the relevant offending.[36] Both are required before disposition can be considered.[37] The parties therefore submit that the 30-day period in this case ran from 6 July 2024, the day after the involvement hearing and the making of the sixth s 23 order, to 4 August 2024.[38]

[39] On 6 August 2024 the eighth s 23 order was made by the District Court. This extended the warrant to 30 August 2024.

[40] The health assessor's report on Mr T was completed on 23 August 2024. A needs assessment and a care and rehabilitation plan, as required by s 23(5) of the CPMIP Act and s 15(a) of the IDCCR Act, were completed on 26 and 27 August 2024 respectively. The inquiries were therefore completed on 27 August 2024.[39]

[41] There was an evidential hearing on 23 September 2024 where the health assessor and care coordinator who had made inquiries were cross-examined. The disposition hearing where submissions were heard took place on 18 October 2024. Judge Elkin made an order the same day under s 25(1)(b) of the CPMIP Act that Mr T be "cared for as a care recipient" under the IDCCR Act.[40]

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36 This appears to be the Attorney-General's position as well.

37 Although it is not before us, we consider the most likely interpretation is that s 23 applies from the finding of unfitness to stand trial, while the 30-day period begins at the time involvement is found. This was the view on the interpretation of s 23 reached by the High Court in the first habeas corpus decision, above n 27: see above at [33]. This interpretation also avoids the issues with the suitability and application of the CPA, for example whether an involvement hearing can be characterised as a trial (see below n 69) and the issues with s 169 of the CPA (see below at [65]). We comment that it would have been preferable if s 23 had been amended to this effect when the order of the involvement hearing and the determination of fitness to stand trial were reversed. Dunningham J made a similar point in the first habeas corpus decision: see above at [33] and above n 31.

38 The Courts below both said the 30-day period expired on 3 August 2024: HC judgment, above n 5, at [8]; and CA judgment, above n 6, at [5]. However, their calculations incorrectly included the date of the involvement hearing: see Legislation Act 2019, s 54 item 3. Further, although 30 days had elapsed on 4 August 2024, that day was a Sunday. The period to complete the inquiries was therefore automatically extended to Monday 5 August: see Legislation Act, s 55.

39 The inquiry stage includes the court's receipt of the relevant report(s): see below at [67]. We assume the reports were provided to the court on the same dates they were completed.

40 DC disposition decision, above n 7, at [23].

Decisions below

[42] As noted above, after the seventh s 23 order was made, Mr T made a second habeas corpus application to the High Court.[41] That application was declined by the High Court on 8 August 2024.[42] On 19 August, the Court of Appeal upheld the High Court's decision, albeit for different reasons.[43]

High Court decision

[43] In the High Court Mr T argued that remand to a secure facility under s 23 of the CPMIP Act was only permitted for the purpose of making inquiries and that, at the end of the 30-day period, he should have been released.[44]

[44] Dunningham J commented that this would have made Mr T's detention unlawful prior to the disposition inquiries being ordered, including when he was remanded before and after the involvement hearing but before the order for inquiries was made under s 23(1). She observed that this contradicted Mr T's contention in his first application for habeas corpus that, once he had been found unfit to stand trial, it was appropriate to remand him to a hospital or secure facility, not a prison.[45]

[45] Dunningham J also noted that, if the lawfulness of detention is linked only to the inquiry period, this creates issues as to when those inquiries are concluded. She said that there would inevitably be a gap between the completion of inquiries and the preparation of the report and a further gap before the court considered the report in a disposition hearing.[46]

[46] The Judge rejected Mr T's argument that the disposition hearing was part of the inquiry process.[47] She accepted that there could be a number of reasons for a delay between the completion of inquiries and the disposition hearing, including illness of

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41 Above at [2].
42 HC judgment, above n 5.
43 CA judgment, above n 6.
44 HC judgment, above n 5, at [11]–[12].
45 At [32].
46 At [33].
47 At [34]–[37].

the health assessor, judicial scheduling issues and the need to seek further information for the purposes of s 24. She said:[48]

> For an Act that has the express purpose of providing the Courts with "appropriate options for the detention, assessment, and care of defendants and offenders with an intellectual disability", it cannot have been intended that there be the potential for a gap between the completion of inquiries and the disposition hearing when a defendant, no matter how much of risk they pose to the public, must be released.

[47] The Judge concluded that, in her view, the 30-day period is "intended to ensure that the inquiry stage is completed as quickly as practicable". She said:[49]

> It cannot sensibly be interpreted to mean that any delay of more than 30 days between the order for inquiries and the disposition hearing must automatically result in the release of the defendant. Such an interpretation is not supported by either the text of s 23 or the purpose of the Act.

Court of Appeal decision

[48] The Court of Appeal held that the lawful authority for Mr T's detention was sourced from s 168(1) of the CPA, which applies unless the charges are dismissed or permanently stayed.[50] The Court said s 23 of the CPMIP Act assumes the continued application of the CPA and the Bail Act. This means that s 23(2)(b) of the CPMIP Act is concerned with *where* a remand under s 168(1)(c) is to take place, but it is not the provision which authorises the detention.[51] This is also the case for defendants acquitted on account of insanity.[52]

[49] The Court held that a remand under s 23(2)(b) of the CPMIP Act can last longer than the 30 days stipulated for the inquiries because there are no prescribed conditions on the detention other than that the detention is for the purposes of inquiries under s 23(1).[53]

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48 At [37].
49 At [38].
50 CA judgment, above n 6, at [20].
51 At [21]–[22].
52 At [25].
53 At [27]–[28].

[50] The Court held there was no requirement for the evidence from the health assessors under s 24 to be available within the 30 days provided for in s 23(4). Nor was it necessary for the disposition hearing under s 23 to occur within that timeframe.[54]

Submissions of the parties

Mr T's submissions

[51] Mr T contends the Court of Appeal was wrong to find that s 168(1)(c) of the CPA empowers remand in custody and that s 23 of the CPMIP Act only relates to the place of detention. It is submitted that the clear meaning of s 23 is that it only provides for detention for the period of the inquiries under s 23(1), which must be completed within 30 days. Mr T also submits that the decision on disposition must be made within the 30 days as a part of the inquiries[55] and that there is no power to extend the period of detention.

[52] In Mr T's submission, this interpretation is consistent with the text and legislative history of s 23 and with the scheme of the CPMIP Act. It is submitted that the Court of Appeal's interpretation that the source of the authority to detain persons acquitted on account of insanity arises from the CPA cannot be correct: the originating power under s 168(1)(c) does not exist for such persons since they are no longer "liable on conviction to a sentence of imprisonment". Such an interpretation was not the intention of Parliament. Mr T also submits that s 23 should be read consistently with the rights to freedom of association and movement and the right not to be arbitrarily detained,[56] as well as art 14(1)(b) of the Convention on the Rights of Persons with Disabilities.[57]

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54 At [29].

55 Mr T did, however, recognise that whether or not the disposition hearing also had to take place within 30 days was not at issue because, in this case, the inquiries were not made within 30 days.

56 New Zealand Bill of Rights Act 1990, ss 17, 18 and 22.

57 Convention on the Rights of Persons with Disabilities 2515 UNTS 3 (opened for signature 30 March 2007, entered into force 3 May 2008). This Convention has been ratified by New Zealand. Article 14(1)(b) requires States Parties to ensure that persons with disabilities, on an equal basis with others, are not unlawfully or arbitrarily deprived of their liberty, and that any deprivation of liberty is in conformity with the law, and that no deprivation of liberty shall be justified by the existence of a disability.

The respondent's submissions

[53] The respondent submits that the Court of Appeal was correct to hold that both the CPA and the Bail Act apply and that they provide jurisdiction to deal with continuing questions of detention until the final disposition decision. The respondent submits that s 23(3) of the CPMIP Act makes it clear that the Bail Act is generally to be applied alongside the CPMIP Act. If s 23 is read as prohibiting any form of detention that is not for the purpose of the inquiries as to disposition, that would prevent a court that grants bail under s 23(2)(a) from making the bail subject to conditions other than the condition that "the person go to a place approved by the court for the purpose of the inquiries".

[54] The respondent submits that the appellant's interpretation of s 23 is inconsistent with the structure and purpose of the CPMIP Act and the practical realities of the criminal justice system and that it would undermine public safety, which would be contrary to s 23(3) of the CPMIP Act. The respondent contends that the 30-day timeframe relates only to the inquiries, not the length of remand. In the respondent's submission, "inquiries" in s 23 refers to the health assessor meeting with the person to obtain information about them, similar to the term "assessment" in s 38,[58] but does not include the disposition hearing. Lastly, the respondent submits that the requirement that the court have "sufficient information" in s 24(1) means that multiple s 23 orders may be made, as occurred in this case.

Attorney-General's submissions

[55] The Attorney-General submits that it is plain from the text of s 23, the scheme of the CPMIP Act and its legislative history that the 30-day period relates only to the making of inquiries and that there is no time limit for detention under s 23. In the Attorney-General's submission, the CPA and CPMIP Act must be read together to determine the procedures to be followed when a person is found unfit to stand trial. The Attorney-General further submits that "inquiries" in s 23 do not include the filing of health assessors' reports or the disposition hearing.

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[58] The respondent relies on *Maaka-Wanahi v Attorney-General* [2023] NZCA 217, [2024] 2 NZLR 604 in support of this argument.

[56] Lastly, in the Attorney-General's submission, since there is a power to detain under the CPA unconnected to the making of the inquiries, it was not necessary in this case for the District Court to renew the s 23 order to provide for Mr T's ongoing remand.

Issues

[57] The issues arising from the submissions are:

(a) Can a person who is unfit to stand trial be remanded in custody under ss 168 and 169 of the CPA after a finding of involvement?

(b) Is a person detained under s 23 of the CPMIP Act required to be released after 30 days if disposition has not been decided in that period?

Can a person who is unfit to stand trial be detained under ss 168 and 169 of the CPA after a finding of involvement?

[58] For the reasons set out below we do not consider that ss 168 and 169 of the CPA are apt to deal with persons who have been held unfit to stand trial and found to be involved in the offending in terms of s 10 (or s 11 or s 12) of the CPMIP Act.[59] As s 23 of the CPMIP Act also relates to those acquitted on account of insanity, we also examine whether ss 168 and 169 of the CPA can apply to those persons and conclude that they do not. We examine this issue on the basis that it is unlikely to have been envisaged that the two groups subject to s 23 would be treated differently.

[59] First, s 168(1)(c) authorises an order for remand in custody only if a person has been arrested or is liable on conviction to a sentence of imprisonment.[60] Once a person has been held to be unfit to stand trial and involved,[61] disposition options are in ss 24

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59 We accept the respondent's submission that the Bail Act 2000 continues to apply alongside s 23 of the CPMIP Act, enabling a court to make a grant of bail under s 23(2)(a) subject to the conditions in the Bail Act as well as the condition in s 23(2)(a) of the CPMIP Act "that the person go to a place approved by the court for the purpose of the inquiries". It does not follow from this that the CPA also continues to apply once a person has been found unfit to stand trial or acquitted on account of insanity.

60 The respondent and intervener rely on Mr T remaining liable on conviction to a sentence of imprisonment rather than on him having been arrested.

61 See above at [38], n 37.

and 25 of the CPMIP Act. These are not sentences of imprisonment — they are treatment and care options with the safety of the public and the person at their core.[62] Additionally, while the person remains unfit to stand trial, there is no question of a conviction, let alone a sentence of imprisonment.

[60] Second, s 168 applies if a proceeding is adjourned. "Proceeding" is undefined but must sensibly be understood as a proceeding under the CPA. If a person is found to be unfit to stand trial, the process from that point is governed by the CPMIP Act and not by the CPA.[63] The first step is the involvement hearing and then, if a finding of involvement is made, there is a disposition hearing. Equally, if a person is acquitted by reason of insanity, disposition is determined under the CPMIP Act and not the CPA.

[61] The Court of Appeal considered that a person who is found unfit to stand trial remains subject to the CPA regime because they remain charged with an imprisonable offence unless the charges are dismissed or permanently stayed.[64] We disagree. The prospect that the proceeding under the CPA could be revived is conditional on the defendant becoming fit before the maximum period of detention in s 30 has expired and either the Attorney-General directing or a judge ordering that the defendant be brought before the appropriate court (instead of being held as a patient or care recipient).[65] Section 168 cannot empower the remand in custody of any person found unfit to stand trial based on such a conditional possibility.

[62] The Court of Appeal also said that a person found not guilty by reason of insanity remains subject to the CPA because the proceedings "are not yet finally determined and need to be adjourned pending a final disposition".[66] This cannot be the case. The very fact of acquittal means the proceedings have been fully determined.

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62 It is likewise significant that s 29 of the CPMIP Act confers upon the defendant and the prosecution the same right to appeal against orders made under ss 24 and 25 as "if the order or decision were a sentence". That suggests s 24 and s 25 orders do not come within the ordinary use of the term.

63 It may be that certain parts of the CPA continue to apply to proceedings under the CPMIP Act, including Part 5, Subpart 3 concerning public access to court proceedings and restrictions on reporting, but the overall disposition process is governed by the CPMIP Act. We are also not to be taken as making any comment on whether s 147 of the CPA continues to apply to proceedings under the CPMIP Act. This is the subject of *Bailey v R* (SC 120/2024), in respect of which this Court's decision is still reserved.

64 CA judgment, above n 6, at [20].

65 See above at [22].

66 CA judgment, above n 6, at [25].

Those who have been acquitted of offending are not able to be the subject of criminal proceedings with regard to the same offending[67] and certainly cannot be sentenced for a crime of which they have been acquitted. As explained above, decisions on disposition are made under the CPMIP Act and not the CPA.[68]

[63] Third, s 168(4) makes it clear that there are limits on the periods of detention that can be ordered — warrants must be issued only for the period of the adjournment, up until and during trial, and pending and during sentencing. Neither of the latter periods can apply in respect of a person found unfit to stand trial or acquitted on account of insanity. As noted above, a person acquitted on the basis of insanity cannot be subject to a further trial.[69] If a person has been held unfit to stand trial and involved, the conditional possibility of proceedings being revived if a person becomes fit to stand trial does not, however, come within the words "pending trial" in the usual sense with which they are used. In addition, as discussed above, a person who is unfit to stand trial or who has been acquitted on account of insanity cannot receive a criminal sentence, and orders made under s 24 or s 25 are not sentences.[70]

[64] We accept that s 168(4)(a) allows a warrant for the detention of a person in a prison for the period of an adjournment. We do not consider this term, in the context of the CPA, is apt to cover remand pending inquiries into disposition coming under the CPMIP Act. A shift to the CPMIP Act's process once the defendant is found unfit to stand trial, or is acquitted on account of insanity, is not an adjournment for the purposes of the CPA. From that point, the procedure is governed by an entirely different enactment. Section 168(1)(c) cannot be the basis for the detention of some of the most vulnerable defendants for the purpose of the s 23(1) inquiries without any

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67 CPA, s 47. This is subject to the limited statutory exceptions to the double jeopardy rule: see ss 151–156.

68 Above at [59].

69 Above at [62]. Although an involvement hearing has some characteristics of a trial, there are also major differences given the defendant is unfit to stand trial, including the standard of proof (on the balance of probabilities: CPMIP Act, s 10(2)). If an involvement hearing could be characterised as a trial, there may be an argument that s 168(4)(b) of the CPA could apply in the period between the unfitness to stand trial determination and the involvement hearing. But note the issues with s 169 discussed below at [65].

70 Above at [59].

fixed end point merely because they could possibly become fit and be transferred back to the CPA process.[71]

[65] Fourth, a remand in custody in a prison is unlikely to be appropriate for those who have been found unfit to stand trial or acquitted by reason of insanity. Dunningham J made a similar point in the first habeas corpus decision.[72] The respondent and the intervener suggest that s 169 is the answer to this issue. However, that section, which allows remand to a hospital or secure facility, is only available pending trial. As discussed above, there can be no further trial for a person who has been acquitted on account of insanity.[73] Even if an involvement hearing can be described as a trial, a disposition hearing only occurs once involvement is found and so after "trial".

Is a person detained under s 23 of the CPMIP Act required to be released after 30 days if disposition has not been decided within this period?

[66] For ease of reference, we again summarise s 23. Section 23(1) provides that the court must order inquiries as to the most suitable means of dealing with a person held to be unfit to stand trial or acquitted on account of insanity. Section 23(2) provides that, for the purpose of making the inquiries, a person must either be granted bail or be remanded to a hospital or secure facility. Section 23(4) provides that inquiries as to disposition must be completed as quickly as practicable and, in any event, within 30 days.

[67] It is clear from the legislative history that the purpose of s 23 and especially the time limit in s 23(4) was to ensure decisions on disposition are made as soon as practicable.[74] In light of that background, we do not accept the submission of the respondent and the Attorney-General that only the inquiries (but not the report(s) of those inquiries) must be completed within 30 days from the time involvement is found.[75] The whole point of the inquiries is to inform the court as to disposition

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71 In any event, an order under s 168(1)(c) would need to have a fixed end point as an adjournment under s 167 of the CPA must be "to a time and place then appointed". As noted below at [75], any order under s 23(2) should be to a fixed end date.

72 See above at [33].

73 Above at [62].

74 See above at [18]–[20].

75 See above at [38] and n 37.

options. Without the communication of the inquiries to the court by way of such report(s), the inquiries are incomplete. In any event, in this case the inquiries had barely begun before the end of the 30-day period, let alone been completed.[76]

[68] In support of their interpretation of s 23 of the CPMIP Act, the respondent and the Attorney-General rely on *Maaka-Wanahi v Attorney-General*. In that case, the Court of Appeal held that the 14-day remand period[77] to a prison or to a hospital or secure facility for the purpose of the preparation of an assessment report under s 38(2)(b) and (c) of the CPMIP Act related only to detention for the purpose of the assessment and not the report.[78] However, *Maaka-Wanahi* concerned s 38 of the CPMIP Act, not s 23. Relevantly, the High Court in *Maaka-Wanahi* considered that s 23(4) applies to the provision of a report. McQueen J stated that it is appropriate that the s 23 inquiries progress "as soon as practicable, because at that stage, the person is no longer subject to criminal proceedings".[79] By contrast, s 38(2)(b) and (c) only apply to persons already in custody, who will remain in custody after the assessment is completed or the assessment period expires.[80]

[69] We do not, however, accept Mr T's submission that the disposition hearing must be held and disposition decided within the 30-day period. This is clear from the structure and wording of s 23. When the court "*order[s]* that inquiries be made",[81] those inquiries must be completed "as quickly as practicable and, in any event, within 30 days after the date of the order under which the inquiries are made".[82] The court is not itself the inquirer and the 30-day period applies to the inquirers, not the court. Had the 30-day period applied to the decision as to disposition then it can be expected the CPMIP Act would say so expressly. Sections 23 and 24 contemplate that there will be a delay after the inquiries and before the decision as to disposition. It is therefore implicit that they envisage that detention may continue until disposition is determined.

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76 See above at [40].
77 The 14-day period can be extended to a maximum of 30 days, with the consent of the person or their guardian: CPMIP, s 40(1).
78 *Maaka-Wanahi v Attorney-General*, above n 58, at [8] and [81].
79 *Maaka-Wanahi v Attorney-General* [2023] NZHC 187 at [83], and see at [84].
80 See CPMIP Act, s 38(1) and (3).
81 Section 23(1) (emphasis added).
82 Section 23(4).

[70] Further, Mr T's proposed timeframe — requiring the disposition hearing and decision to occur within the 30 days — is unlikely to be possible in most cases. Once the report or reports are produced, the parties and the court must have time to consider them, including considering whether, in terms of s 24(1), the court has "sufficient information" for disposition orders to be made. A disposition hearing must be scheduled, and the parties given an opportunity to be heard and witnesses cross-examined. The decision as to disposition is an important one concerning a vulnerable person and must be made as soon as practicable. There must, however, be enough time allowed for the decision to be made after due and proper process.

[71] Section 23 does envisage that the court will ordinarily have sufficient information to decide disposition after the 30-day period for inquiries. This must be so since that is the object of the inquiries. If, having received the report of the s 23 inquiries, the court decides it does not have sufficient information, it may ask for more. The ability to ask for further information should not be relied upon to circumvent the 30-day period for inquiries, and any further information required should be obtained as quickly as practicable. In light of the New Zealand Bill of Rights Act 1990,[83] the fact the person may already have been detained for a significant period and given there is no offence nor any order under s 24 or 25 of the CPMIP Act justifying detention, it is imperative that the time between the inquiries and disposition is kept to a minimum.

[72] The period between the completion of the inquiries and the disposition hearing in this case was from 27 August to 18 October.[84] That timeframe was not unreasonable. This means that the only failure of process in this case was the reports not being completed within the 30 days from when Mr T was held to be involved.

[73] The issue is whether there is the power to allow the remand to a hospital or secure facility to continue after the end of the 30-day period and receipt of the report up until final disposition has been decided. We agree with the High Court that s 23(2)(b) must be interpreted to allow the remand to continue.[85] When deciding

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83 See New Zealand Bill of Rights Act, ss 17, 18 and 22.

84 See above at [40]–[41].

85 See HC judgment, above n 5, at [36] and [38]. It would have been preferable if this had been made clearer by the legislature. We note for completeness that bail under s 23(2)(a) must also be able to continue on the same conditions had bail been granted.

whether to grant bail under s 23(2)(a), the need to protect the public is the paramount consideration.[86] Releasing the person after the 30-day period expires and before disposition has been decided without any conditions, notwithstanding that a grant of bail was not initially deemed appropriate, would be at odds with Parliament's imperative that public safety is paramount.

[74] We comment also that disposition options under ss 24 and 25 are treatment and care options with the interests of the person and the public at their core.[87] Releasing a person before the court has had the opportunity to consider whether an order under s 24(2) is necessary "in the interests of the public or any person or class of person who may be affected by the court's decision" (including the person themselves), or whether an alternative order under s 25 is appropriate, would be against the interests of the person and the public.

[75] Any limitation on the person's rights arising from their continued detention after the 30 days has expired but before the disposition hearing therefore aligns with the scheme and purpose of the CPMIP Act. The limitation on the person's rights should, however, be as brief as possible. We therefore consider that any renewal of remand or bail after the report or reports have been received should be to a fixed date and for no more than 30 days at a time.[88]

Result

[76] The appeal is dismissed. Our reasons differ from those of the Court of Appeal but largely coincide with the reasons of the High Court.

[77] We comment that this appeal has highlighted issues with the interpretation of s 23 of the CPMIP Act. We have interpreted the provision in line with its purpose and to ensure its workability as well as the rights of the vulnerable persons subject to any remand.[89] It would be preferable for the wording to align more clearly with the purpose and the section may therefore merit legislative attention.

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86 CPMIP Act, s 23(3).
87 See above at [59].
88 A maximum of two renewals should in the vast majority of cases suffice.
89 See above at [38], n 37 and [67]–[75].

[78] If any question of costs arises that cannot be resolved, then memoranda can be filed on or before 30 September 2025.

[79] We make an order prohibiting publication of the name, address, occupation and identifying particulars of the appellant.[90]

Solicitors:
Raymond Donnelly & Co, Crown Solicitor's Office, Christchurch for Respondent
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Intervener

[90] Mr T is now a vulnerable person under s 11D(g) of the Family Court Act 1980 as he is a care recipient under the IDCCR Act. Section 130 of the IDCCR Act provides that the prohibition on publication of reports of proceedings including identifying information in relation to a vulnerable person under ss 11B–11D of the Family Court Act applies to reports of proceedings under the IDCCR Act. Section 130 does not apply to these proceedings as they are not under the IDCCR Act. We nevertheless consider that name suppression is appropriate, given Mr T's current status as a care recipient under the IDCCR Act. We are, at the same time as publishing this judgment, reissuing our leave decision to accord with the suppression order made in this judgment.

Appendix: Relevant legislative provisions

Criminal Procedure (Mentally Impaired Persons) Act 2003

[80] Section 8A of the CPMIP Act provides:

> **8A Determining if defendant unfit to stand trial**
>
> (1) The court must receive the evidence of 2 health assessors as to whether the defendant is mentally impaired.
>
> (2) If the court is satisfied on the evidence given under subsection (1) that the defendant is mentally impaired, the court must record a finding to that effect and—
>
> (a) give each party an opportunity to be heard and to present evidence as to whether the defendant is unfit to stand trial; and
>
> (b) find whether or not the defendant is unfit to stand trial; and
>
> (c) record the finding made under paragraph (b).
>
> (3) The standard of proof required for a finding under subsection (2) is the balance of probabilities.
>
> (4) If the court records a finding under subsection (2) that the defendant is fit to stand trial, the court must continue the proceedings.
>
> (5) If the court records a finding under subsection (2) that the defendant is unfit to stand trial, the court must inquire into the defendant's involvement in the offence under section 10, 11, or 12, as the case requires.

[81] Section 10 of the CPMIP Act provides:

> **10 Inquiry before trial into defendant's involvement in the offence**
>
> (1) This section applies if, before trial, the defendant is found unfit to stand trial.
>
> (2) The court must decide whether the court is satisfied, on the balance of probabilities, that the evidence against the defendant is sufficient to establish that the defendant caused the act or omission that forms the basis of the offence with which the defendant is charged.
>
> (3) For the purposes of subsection (2), the court may consider—
>
> (a) any formal statements that have been filed under section 85 of the Criminal Procedure Act 2011:
>
> (b) any oral evidence that has been taken in accordance with an order made under section 92 of the Criminal Procedure Act 2011:

(c) any other evidence that is submitted by the prosecutor or defendant.

[82] Section 23 of the CPMIP Act provides:

> **23 Inquiries about persons found unfit to stand trial or insane**
>
> (1) When a person is found unfit to stand trial or is acquitted on account of his or her insanity, the court must order that inquiries be made to determine the most suitable method of dealing with the person under section 24 or section 25.
>
> (2) For the purposes of the inquiries under subsection (1), the court must either—
>
> (a) make it a condition of a grant of bail that the person go to a place approved by the court for the purpose of the inquiries; or
>
> (b) remand the person to a hospital or a secure facility.
>
> (3) Despite any provision in the Bail Act 2000, in deciding whether or not to grant bail for the purposes of subsection (2)(a), the need to protect the public is the paramount consideration.
>
> (4) The inquiries under subsection (1) must be completed as quickly as practicable and, in any event, within 30 days after the date of the order under which the inquiries are made.
>
> (5) A person who has an intellectual disability must, during the period in which the inquiries are made under subsection (1), be assessed under Part 3 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

[83] Section 24 of the CPMIP Act provides:

> **24 Detention of defendant found unfit to stand trial or insane as special patient or special care recipient**
>
> (1) When the court has sufficient information on the condition of a defendant found unfit to stand trial or acquitted on account of his or her insanity, the court must—
>
> (a) consider all the circumstances of the case; and
>
> (b) consider the evidence of 1 or more health assessors as to whether the detention of the defendant in accordance with one of the orders specified in subsection (2) is necessary; and
>
> (c) make one of the orders referred to in paragraph (b) if it is satisfied that the making of the order is necessary in the interests of the public or any person or class of person who may be affected by the court's decision.

(2) The orders referred to in subsection (1) are that the defendant be detained—

(a) in a hospital as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or

(b) in a secure facility as a special care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

(3) Before the court makes an order specified in subsection (2)(a), the court must have received evidence, under subsection (1)(b), about the defendant from at least 1 health assessor who is a psychiatrist.

[84] Section 25 of the CPMIP Act provides:

25 Alternative decisions in respect of defendant unfit to stand trial or insane

(1) If, after considering the matters specified in section 24(1)(a) and (b) concerning a defendant found unfit to stand trial or acquitted on account of his or her insanity, the court is not satisfied that an order under section 24(2) is necessary, the court must deal with the defendant—

(a) by ordering that the defendant be treated as a patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or

(b) by ordering that the defendant be cared for as a care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or

(c) if the person is liable to be detained under a sentence of imprisonment, by deciding not to make an order; or

(d) by ordering the immediate release of the defendant.

(2) Before the court makes an order under subsection (1)(a), the court must be satisfied on the evidence of 1 or more health assessors (at least 1 of whom must be a psychiatrist) that the defendant is mentally disordered.

(3) Before the court makes an order under subsection (1)(b), the court must be satisfied on the evidence of 1 or more health assessors that the defendant—

(a) has an intellectual disability; and

(b) has been assessed under Part 3 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; and

(c) is to receive care under a care programme completed under section 26 of that Act.

(4) In the exercise of its powers under subsection (1), the court may take into account any undertaking given by, or on behalf of, the defendant that the defendant will undergo or continue to undergo a particular programme or course of treatment.

[85] Section 30 of the CPMIP Act sets out the maximum duration of detention under an order made pursuant to s 24:

30 Duration of detention as special patient or special care recipient where person unfit to stand trial

(1) The maximum period for which a defendant who has been found unfit to stand trial can be detained under section 24 as a special patient or a special care recipient is—

(a) 10 years from the date of the making of the order under section 24 if the defendant was charged with an offence that was punishable by imprisonment for life; or

(b) if paragraph (a) does not apply, a period from the date of the order under section 24 equal to half the maximum term of imprisonment to which the defendant would have been liable if he or she had been convicted of the offence charged.

(2) If the defendant was charged with more than 1 offence, the relevant offence for the purposes of subsection (1)(b) is the offence punishable by the longest term of imprisonment.

(3) An order under section 24 in respect of a defendant who has been found unfit to stand trial continues in force during the maximum period specified in subsection (1) until—

(a) the defendant is brought before a court in accordance with a direction given under section 31; or

(b) a direction is given, under section 31, that the defendant be held as a patient or as a care recipient.

(4) Subsection (3) is subject to sections 84 and 128 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or to section 105 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, as the case may require.

(5) An order under section 24 is to be treated as cancelled if every charge brought against the defendant in the proceedings in which the order was made is withdrawn or dismissed.

[86] Section 31 relates to what happens upon the expiry of the maximum period in s 30, or if, at any time before the expiry of that period, a certificate is given to the effect that the defendant is no longer unfit to stand trial or that their continued detention is no longer necessary:

31 Change of status from special patient to patient or special care recipient to care recipient where person unfit to stand trial

(1) This section applies to a defendant who has been found unfit to stand trial and who is detained as a special patient or as a special care recipient in accordance with an order under section 24 (the **defendant**).

(2) If, before or on the expiry of the relevant maximum period specified in section 30, a certificate is given under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 to the effect that the defendant is no longer unfit to stand trial, the Attorney-General must either—

(a) direct that the defendant be brought before the appropriate court; or

(b) direct that the defendant be held as a patient or, as the case requires, as a care recipient.

(3) If, at any time before the expiry of the relevant maximum period specified in section 30, a certificate is given under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 to the effect that, although the defendant is still unfit to stand trial, the continued detention of the defendant under section 24 is no longer necessary to safeguard the interests specified in subsection (3A), the Minister of Health, acting with the concurrence of the Attorney-General, must—

(a) consider whether, in the Minister's opinion, the continued detention of the defendant under that section is no longer necessary to safeguard those interests; and

(b) direct that the defendant be held as a patient or, as the case requires, as a care recipient if, in the Minister's opinion, that detention is no longer necessary to safeguard those interests.

(3A) The interests referred to in subsection (3) are—

(a) the defendant's own interests; and

(b) the safety of the public or the safety of a person or class of person.

(3B) In reaching a decision under subsection (3)(a), the Minister must have regard to any report from the Director of Mental Health made under section 33A.

(4) The Attorney-General must direct that the defendant be held as a patient or, as the case requires, as a care recipient if—

(a) the defendant is still detained as a special patient or as a special care recipient when the maximum period specified

in section 30 expires; and

(b) no direction under subsection (2) or subsection (3) has been given in respect of the defendant; and

(c) no certificate of the kind referred to in subsection (2) has been given in respect of the defendant.

(5) A direction under this section—

(a) that the defendant be held as a patient is to be regarded as a compulsory treatment order for the purposes of the Mental Health (Compulsory Assessment and Treatment) Act 1992, and the provisions of that Act apply accordingly:

(b) that the defendant be held as a care recipient is to be regarded as a compulsory care order for the purposes of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, and the provisions of that Act apply accordingly.

(6) The powers and duties conferred and imposed on the Attorney-General by this section are not capable of being exercised or performed by the Solicitor-General.

[87] Section 33 relates to the duration of an order made under s 24 that a person be detained as a special patient or special care recipient:

33 Duration of order for detention as special patient or special care recipient if person acquitted on account of insanity

(1) This section applies to a defendant who has been acquitted on account of his or her insanity and who is detained as a special patient or a special care recipient in accordance with an order under section 24 (the **defendant**).

(2) The order under which the defendant is detained continues in force until—

(a) a direction is given under this section that the defendant is to be held as a patient or as a care recipient; or

(b) the defendant is discharged in accordance with a direction given under this section.

(3) If, at any time while the order continues in force, a certificate is given under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 to the effect that the defendant's continued detention under the order is no longer necessary to safeguard the interests specified in subsection (4), the Minister of Health must—

(a) consider whether, in the Minister's opinion, the defendant's continued detention is no longer necessary to safeguard those

interests; and

(b) if, in the Minister's opinion, that detention is no longer necessary to safeguard those interests, direct—

(i) that the defendant be held as a patient or, as the case requires, as a care recipient; or

(ii) that the defendant be discharged.

(4) The interests referred to in subsection (3) are—

(a) the defendant's own interests; and

(b) the safety of the public or the safety of a person or class of person.

(4A) In reaching a decision under subsection (3)(a), the Minister must have regard to any report from the Director of Mental Health made under section 33A.

(5) A direction under this section—

(a) that the defendant be held as a patient is to be regarded as a compulsory treatment order for the purposes of the Mental Health (Compulsory Assessment and Treatment) Act 1992, and the provisions of that Act apply accordingly:

(b) that the defendant be held as a care recipient is to be regarded as a compulsory care order for the purposes of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, and the provisions of that Act apply accordingly.

Criminal Justice Act 1985

[88] Section 115 of the CJA was the predecessor to s 23 of the CPMIP Act:[91]

115 Order to be made if person under disability or insane

(1) Subject to subsections (2) and (4) of this section, if a person—

(a) is found to be under disability; or

(b) is acquitted on account of his or her insanity,—

the court shall make an order that the person be detained in a hospital as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992.

(2) In any case to which subsection (1) of this section applies, the court, having regard to all the circumstances of the case, and being satisfied, after hearing medical evidence, that it would be safe in the interests of

[91] Emphasis added.

the public to make an order under this subsection, may, instead of making an order under subsection (1) of this section—

(a) make an order that the person be detained in a hospital as a patient; or

(b) make an order for the person's immediate release; or

(c) if the person is liable to be detained under any sentence of imprisonment, decide not to make any order under this section.

…

(4) Where a person is found to be under disability or is acquitted on account of his or her insanity, the court may, instead of exercising *immediately* any of its powers under subsections (1) and (2) of this section, *remand the person to a hospital, for any period not exceeding 7 days, for the purpose of making enquiries* to determine the most suitable method of dealing with the case pursuant to this section.

Criminal Procedure Act 2011

[89] Sections 167, 168 and 169 of the CPA relate to the power to adjourn proceedings and how to deal with the defendant on adjournment:

167 Power to adjourn

(1) Any proceeding may from time to time be adjourned by a judicial officer to a time and place then appointed.

(2) A Registrar may adjourn any proceeding before the trial to a time and place then appointed if the defendant is not in custody.

(3) Despite subsection (2), a Registrar may adjourn a proceeding in any case if the Registrar is exercising the power of the court under section 57.

168 Dealing with defendant on adjournment

(1) If a proceeding is adjourned, a judicial officer or Registrar may, subject to sections 171 and 172, and in accordance with any applicable provisions of the Bail Act 2000,—

(a) allow the defendant to go at large; or

(b) grant the defendant bail under the Bail Act 2000; or

(c) if the defendant is liable on conviction to a sentence of imprisonment or if the defendant has been arrested, remand the defendant in custody.

(2) A Registrar may exercise the power conferred by subsection (1)(c) to

remand a defendant in custody if—

(a) both the defendant and the prosecutor agree to the remand; and

(b) the defendant—

(i) is legally represented or has indicated that he or she has received legal advice; or

(ii) has declined an opportunity to obtain legal advice.

(3) If a Registrar remands a person in custody under subsection (1)(c) the defendant must be brought before a judicial officer at the earliest opportunity if, at any time during the period of remand, the defendant withdraws his or her agreement under subsection (2)(a) and the judicial officer must declare what action (if any) should be taken under subsection (1) in respect of the defendant.

(4) If a defendant is remanded in custody under subsection (1)(c), the judicial officer or Registrar must issue a warrant for the detention of the defendant in a prison—

(a) for the period of the adjournment; or

(b) pending and during the defendant's trial; or

(c) pending the defendant being brought up for sentence and during his or her sentencing.

(5) If a Registrar adjourns a proceeding and the defendant or the prosecutor are not present, the Registrar must notify the absent party in writing.

…

169 Order for detention of defendant in hospital or secure facility

(1) Despite section 168(4), the court may, instead of issuing a warrant under that subsection, make an order for the defendant's detention in a hospital or secure facility pending the defendant's trial if the court is satisfied of the matters in subsection (2).

(2) Before making an order under subsection (1), the court must be satisfied, on the production of a certificate or certificates by 2 health assessors, that—

(a) the defendant is mentally impaired; and

(b) the defendant's mental condition requires that, in the defendant's own interest, the defendant should be detained in a hospital or secure facility instead of in a prison.

(3) In this section,—

(a) **health assessor** has the same meaning as in section 4(1) of

the Criminal Procedure (Mentally Impaired Persons) Act 2003:

(b) **hospital** has the same meaning as in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992:

(c) **secure facility** has the same meaning as in section 9(2) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.