10 Years of the IDCC&R Framework

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Te Korowai-Whāriki

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Background: Pathway to the IDCC&R Act

- Historically people with an intellectual disability who offended were managed under the mental health system until the Mental Health (Compulsory Assessment and Treatment) Act, 1992 created an unintended legal gap, which resulted in people being subject to criminal justice dispositions (or not being charged for criminal offences).

- The enactment of the Criminal Procedure (Mentally Impaired Persons) Act, 2003, and the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (IDCC&R Act), closed the legal gap.

A brief history of the IDCC&R Act 2003

During the policy development phase (1999 - 2003) a number of contentious issues emerged:

- Whether to include a civil commitment component for people who had not offended (or been charged) but whose behaviour was regarded as posing a significant danger to others, or themselves (legal provision was ultimately rejected by parliament) Funding for supports was retained, now known as High and Complex Framework encompassing both civils and CR's.

- Whether to include people with personality disorder, ASD, or brain injury. The decision by parliament was to restrict the Act to Intellectual Disability only.

A brief history of the IDCC&R Act 2003

- Whether to include children and young persons (under 17 years), or rely on the care and protection or youth justice provisions in the Children, Young Persons and their Families Act 1989. (They decided to only include children or young persons charged with very serious offences, such as murder/manslaughter, and whose cases would be heard in the District or High Court).
  - However many will be aware that the Youth Court can now refer youth. (due in large part to the change in jurisdiction of the Youth Court, now having disposition powers for CPMIP). This was as previously not anticipated.

A brief history of the IDCC&R Act 2003

- The Youth Court criminal age of responsibility since October 2011 is now 10 years old, NIDCA could encounter these children for charges of Murder or Manslaughter. For other crimes, the youngest age of a court referral is 14 years old.
- *(NB – Age of referral for civil clients is 17 and over)*

- While the IDCC&R and its companion the CPMIP were enacted in 2003 they did not come into force until 1 September 2004. Hence we have only in the last few months been able to look at data for the full 10 years.

In Summary

- The IDCC&R Act was passed in an effort to better meet the care and rehabilitative needs of intellectually disabled offenders.
- Where does the statutory definition leave people with ASD and other presentations that may be considered disabilities?
- Many Care recipients under IDCC&R and a large percentage of civil clients under the High and Complex Framework have an ID in conjunction with presentations including Autistic Spectrum Disorder.
- ASD alone (without an ID) is not an eligible presentation for disposition under IDCC&R.

What is the High and Complex Framework (HCF) and what do people actually receive?

High and Complex Framework

Service Specifications – RID's :

- **NIDCA** - **N**ational **I**ntellectual **D**isability **C**are **A**gency (Capital and Coast DHB)
- **RIDSAS** - **R**egional **I**ntellectual **D**isability **S**upported **A**ccommodation **S**ervices (7 including: IDEA RIDSAS (formerly Timata Hou), Te Roopu Taurima O Manukau, Community Living, Navigate, Richmond, PACT, Community Care Trust)
  - Provides placements for Secure and Supervised Care Recipients and Civil NIDCA clients
- **RIDSS** - **R**egional **I**ntellectual **D**isability **S**ecure **S**ervices (and NIDSS e.g. Haumietiketike , Pohutukawa, Hikitia -National Youth Unit)
  - Providing placements for Secure Care Recipients

Supervised and Secure Services

- This Act provides for two different levels of ‘care’
  - Secure Care (Hospital or Community)
  - Supervised Care
- Levels of care provision are guided by the care and rehabilitation plan, Needs Assessment and Specialist Assessors report (including risk assessment)
- Orders are generally for a period of 6 months to a maximum of three years at a time (unless SCR’s) and are reviewed six monthly
- Orders can be extended, varied or cancelled through the Family Court.

National Intellectual Disability Care Agency

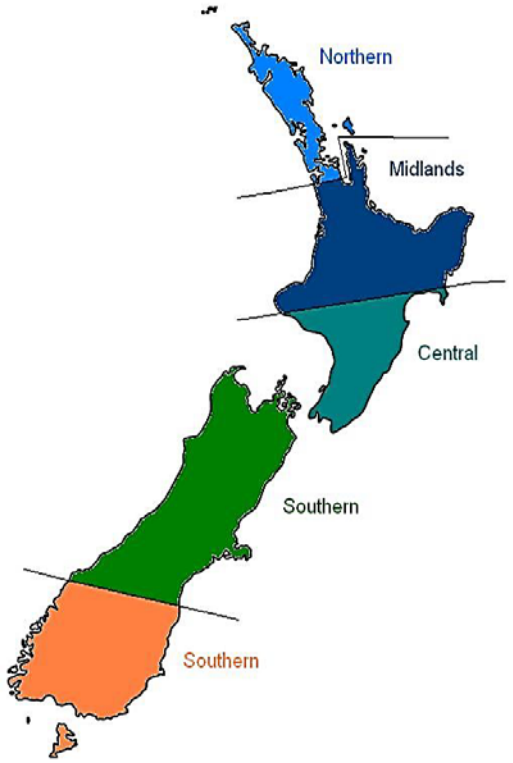
- NIDCA came into being on the 1st January 2013 after Capital and Coast DHB was awarded the contract from the Ministry of Health.
- Prior to Jan 2013, there were 5 regional RIDCAs providing the services that have now been rolled into a national organisation.
- NIDCA comes under the MHAID 3DHB (Te Korowai Whāriki).

NIDCA

- The NIDCA is regarded as a High and Complex NASC.
- Similar functions as per the NASC
  - Needs Assessments
  - Service Coordination's
  - Case Management
- NIDCA also has a NASC Liaison function to assist NASCs with complex cases as well as the duties to administer the IDCC&R Act.

NIDCA Regions

- Auckland (Northern)
- Cambridge (Midlands)
- Wellington (Central and National Office)
- Christchurch and Dunedin (Southern)



NIDCA

- NIDCA have 26 staff:
  - National Manager
  - National Advisor IDCC&R
  - National Operations Co-ordinator
  - National Care Co-ordinator
  - Administrators
  - Intensive Service Coordinators
  - Compulsory Care Coordinators

NIDCA

- NIDCA provides Needs Assessment and Service Coordination to people with intellectual disabilities who may have complex needs, challenging behaviours or who may have offended.
- In all aspects of the services we provide, the person must have an intellectual disability or be under assessment to determine if they do have one.
- If a person does not have an intellectual disability, they are not eligible for NIDCA services however we will attempt to direct the person to a more appropriate agency

Intellectual Disability (IDCC&R)

Is a permanent impairment that…

- Results in significantly sub-average intelligence (FSIQ 70 or below [indicative]); and
- Results in significant deficits in at least two areas of adaptive functioning:
  - Communication
  - Home living
  - Reading, writing and arithmetic
  - Health and safety
  - Leisure and work; and
  - Self-care
  - Social skills
  - Use of community services
  - Self direction
- Became apparent during developmental period <18yrs

It’s all very good to be eligible but how do you get in? (and out again)

CP(MIP) Act 2003 referrals

- The Courts can make disposition orders for people with an intellectual disability, whether they have been found fit or unfit to stand trial.
- Provides an alternative to sending people to prison or into mental health facilities where this is considered more appropriate. This not a first line response meaning that there is often criminal and custodial sentences for people with ID.

CP(MIP) Act 2003

- The legislation enables the court to determine if a defendant is “mentally impaired” (mentally disordered or intellectually disabled)
- and confers powers to dispose of the case by imposing a sentence of imprisonment (part or all of which is served by detention in a hospital secure facility) (Hybrid orders)
- or by making a compulsory care order

Entry into IDCC&R Act 2003

- Dispositional orders made under the Criminal Procedure (Mentally Impaired Persons) Act 2003
- Referrals under section 29 ID(CC&R) Act 2003 from Dept. of Corrections for those already serving a sentence.
- Former Special Patient transfers from MH Services through a transfer pursuant to section 47A of the MH (CAT) Act.

Civil Referrals

- Civil referrals are received by NIDCA most weeks.
- In earlier years the population stabilised around 75% of the RIDCA population. Under NIDCA this has move to approximately half (decreasing).
- The more court ordered referrals the NIDCA receive the fewer civil referrals we are able to accept.

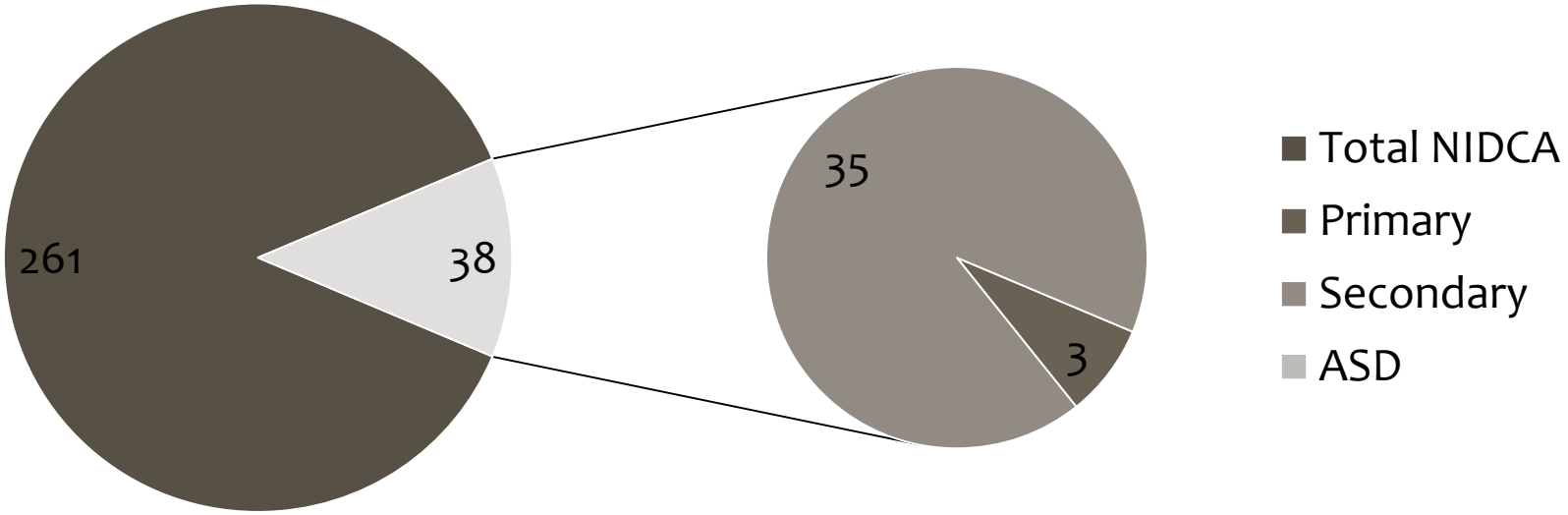
ASD clients in the NIDCA population

ASD clients in the H&C population

- Although ASD in its own right is not eligible under IDCC&R or the High and Complex Framework the population has a number of civil and care recipients within it who have an ID and also ASD.
- NIDCA receive 3 ineligible referrals to every eligible referral (anecdotal). Of those ineligible many have ASD and the courts are seeking an alternative disposition to custodial sentence.

ASD Statistics (June 2015)

ASD within the NIDCA Population

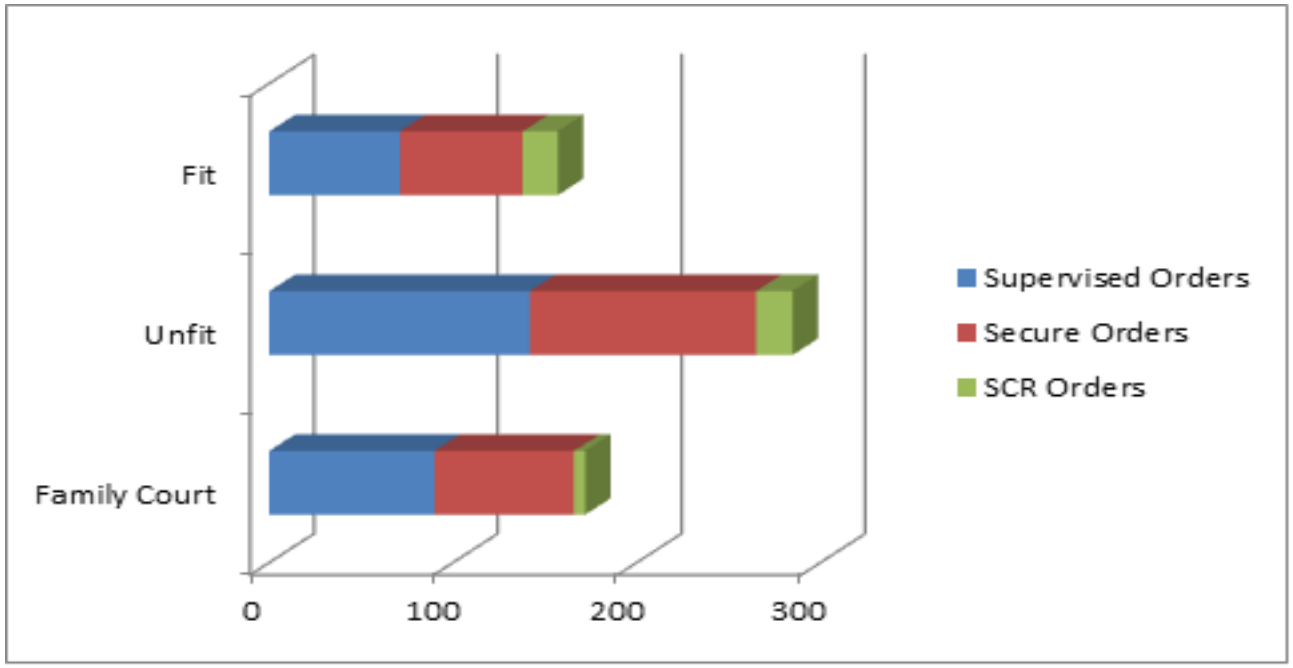


What do we know about our H&C population after 10 years

10 Years on

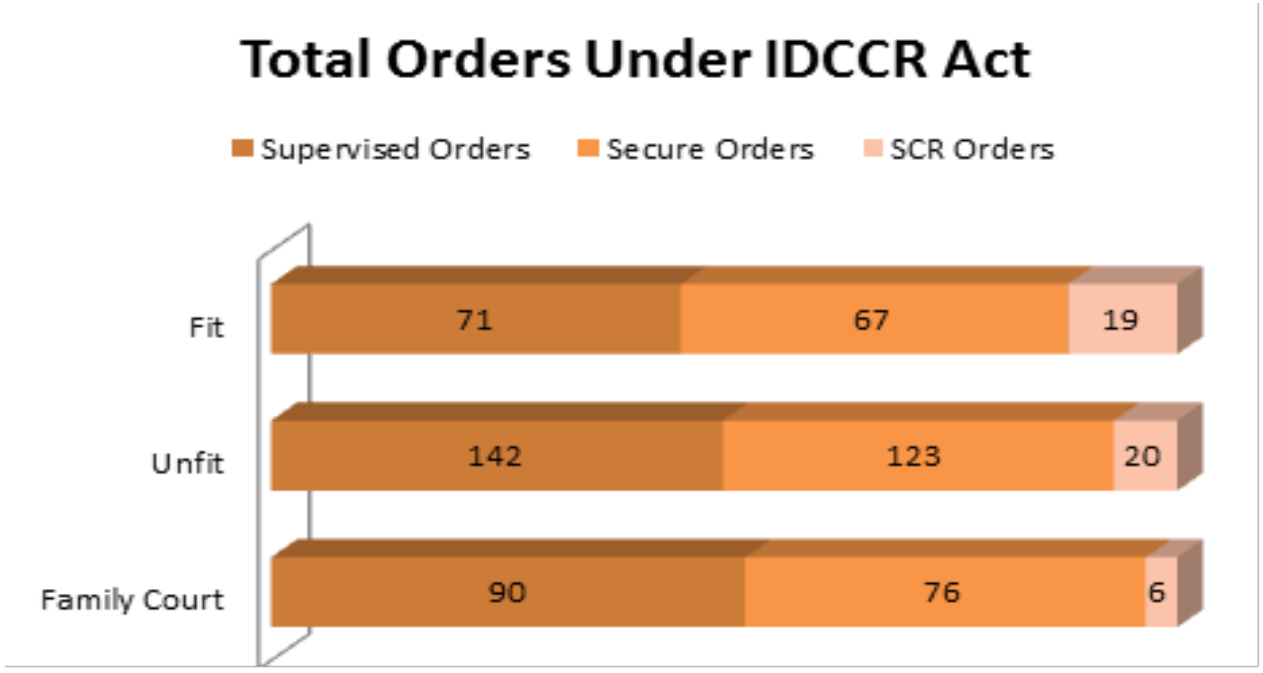
- 10 years on from passing this legislation it is timely to look at the changes over this time and what this means for the group as a whole.
- The framework has faced many challenges both legal and operational. What impact has this had on the lives of this group?

Current Care Recipient Population



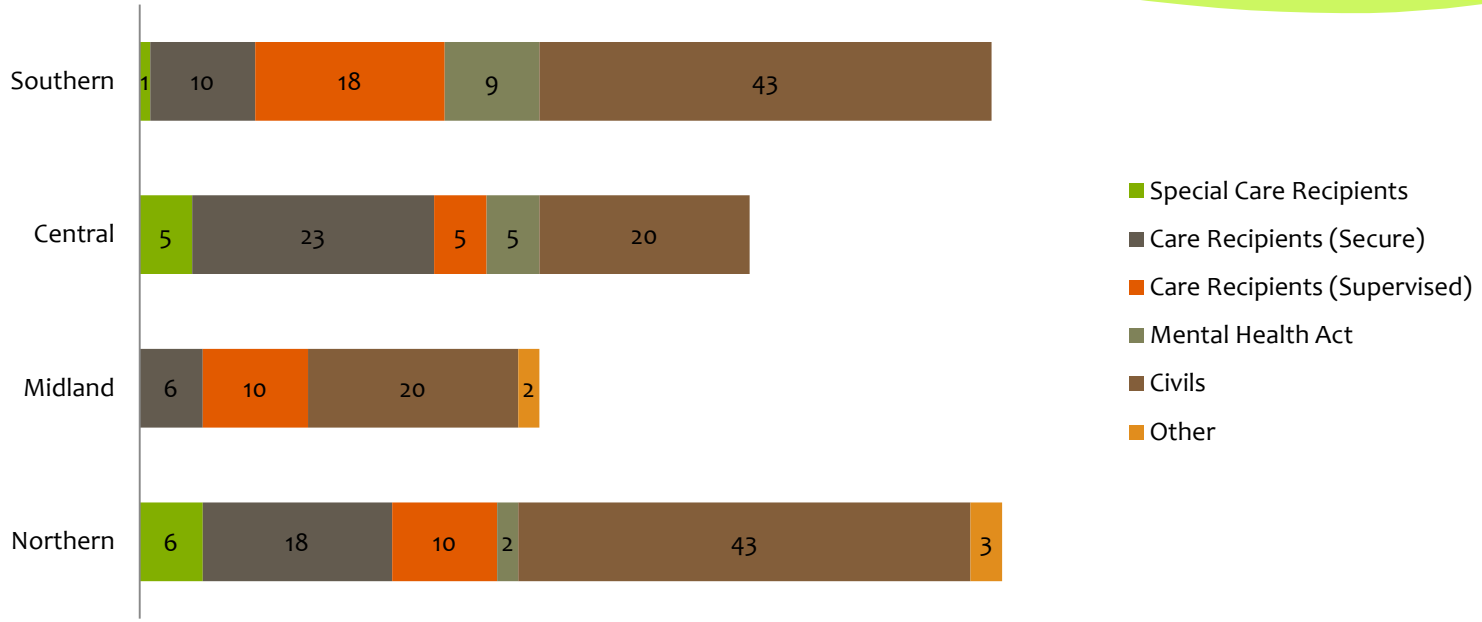
Population 262 as at July 2015

Total Care Recipient Population



Total 614 over 10 years

Order Type and Level by Region



Service Development

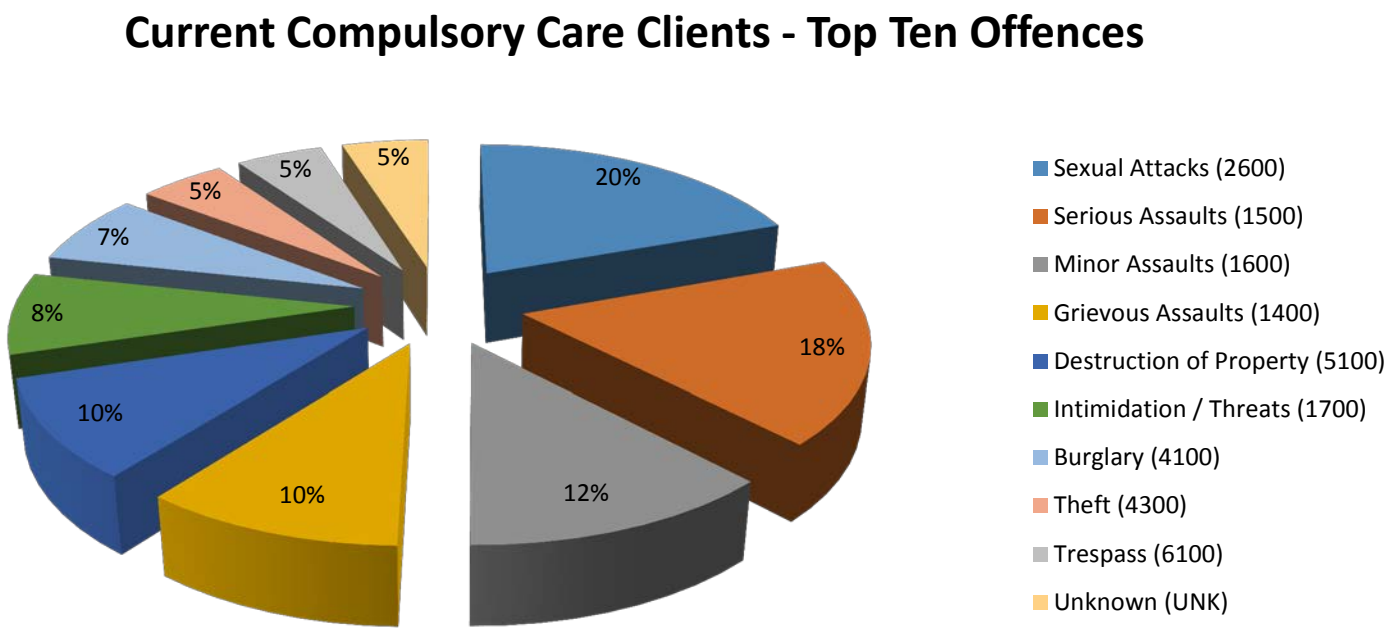
Over this 10 years there has been significant service development:

- National Hospital beds totalled 10 (not counting regional capacity) in 2004. In 2014 there were 36.
- In 2004 there was only one level of hospital secure, we have now developed step down capacity and cottages on hospital sites.
- We now have a dedicated national youth facility (not anticipating any youth no capacity was purchased until 2010 opened 2013)

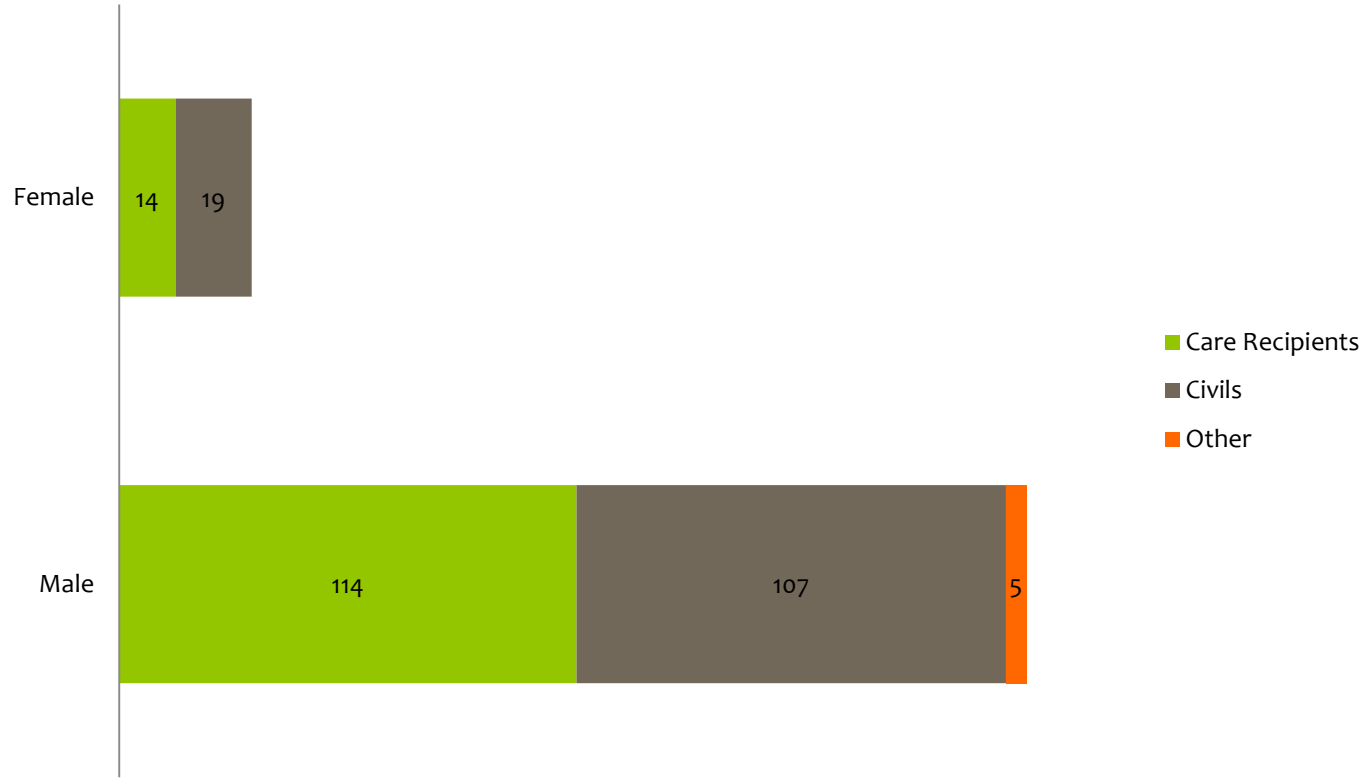
Statistics

- Longest consecutive order was made in 2004, there is only one of this duration however there are 2 others in consecutive years 2005 and 2006. The average length of consecutive stay is 4 years.
- Recidivism 15% based on report. Likely higher due to retention within services.
- Last year was the first time we saw a change in presentation in the general stats from more supervised to now being more secure than supervised Care Recipients.

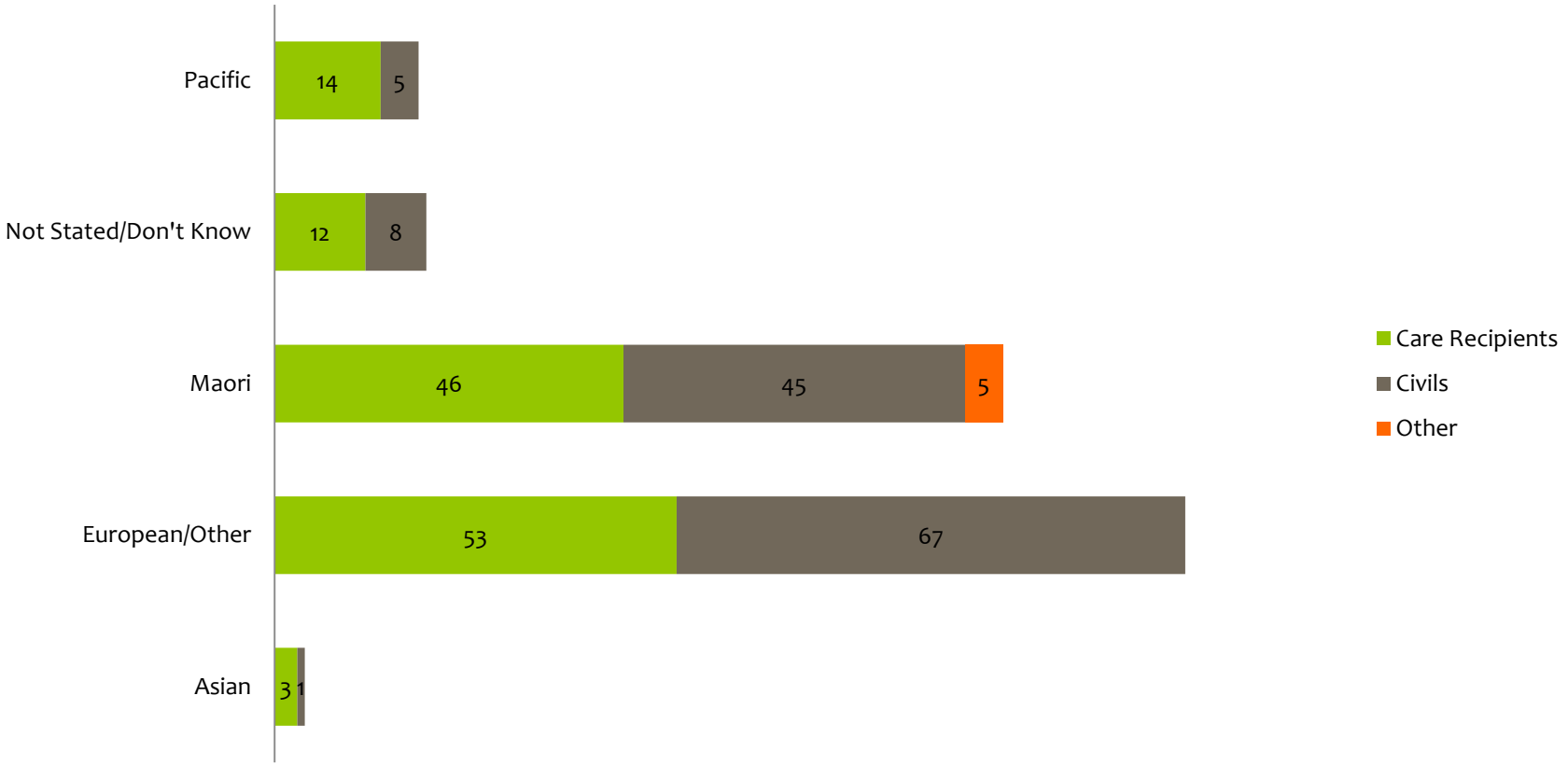
Most frequent offence types



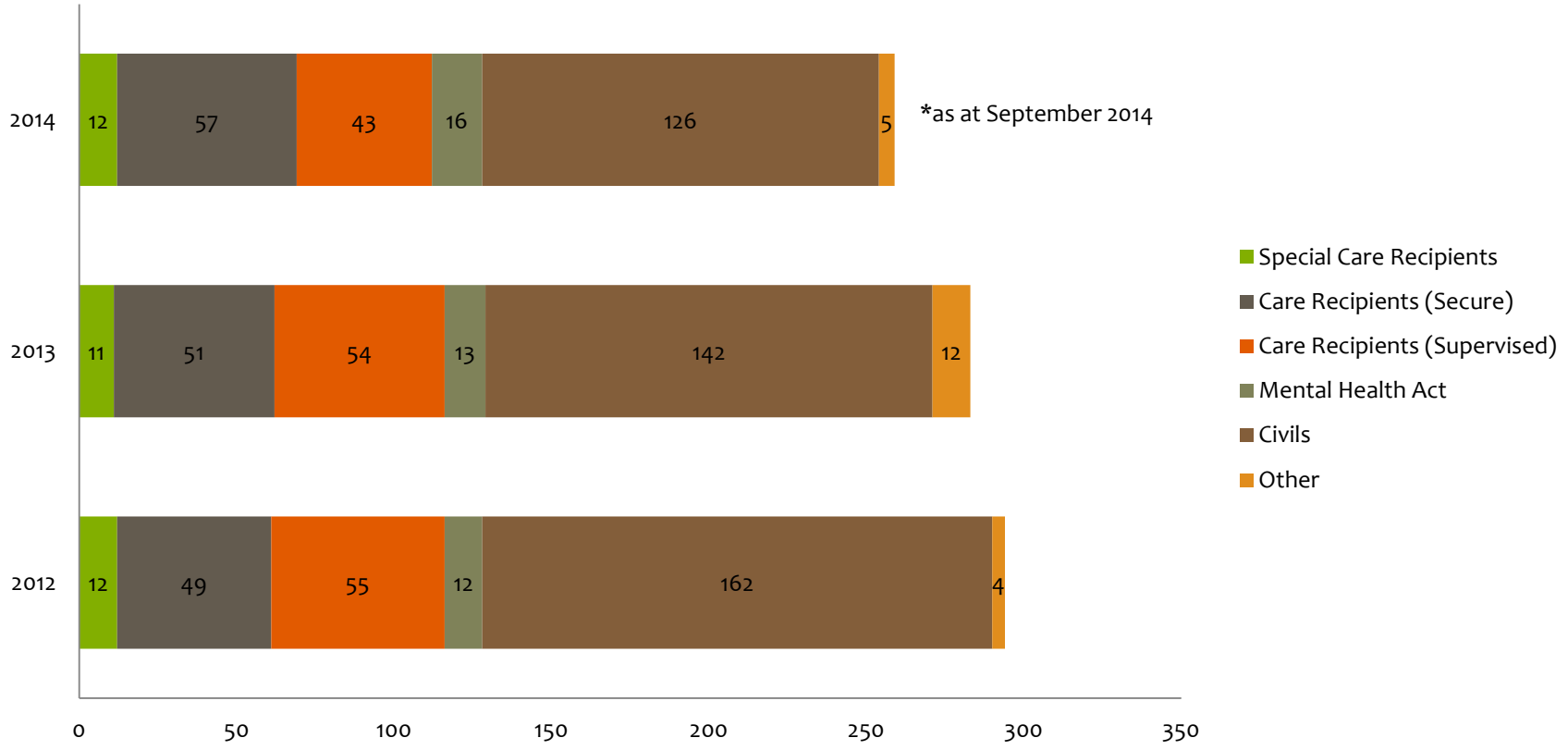
Gender of NIDCA Clients



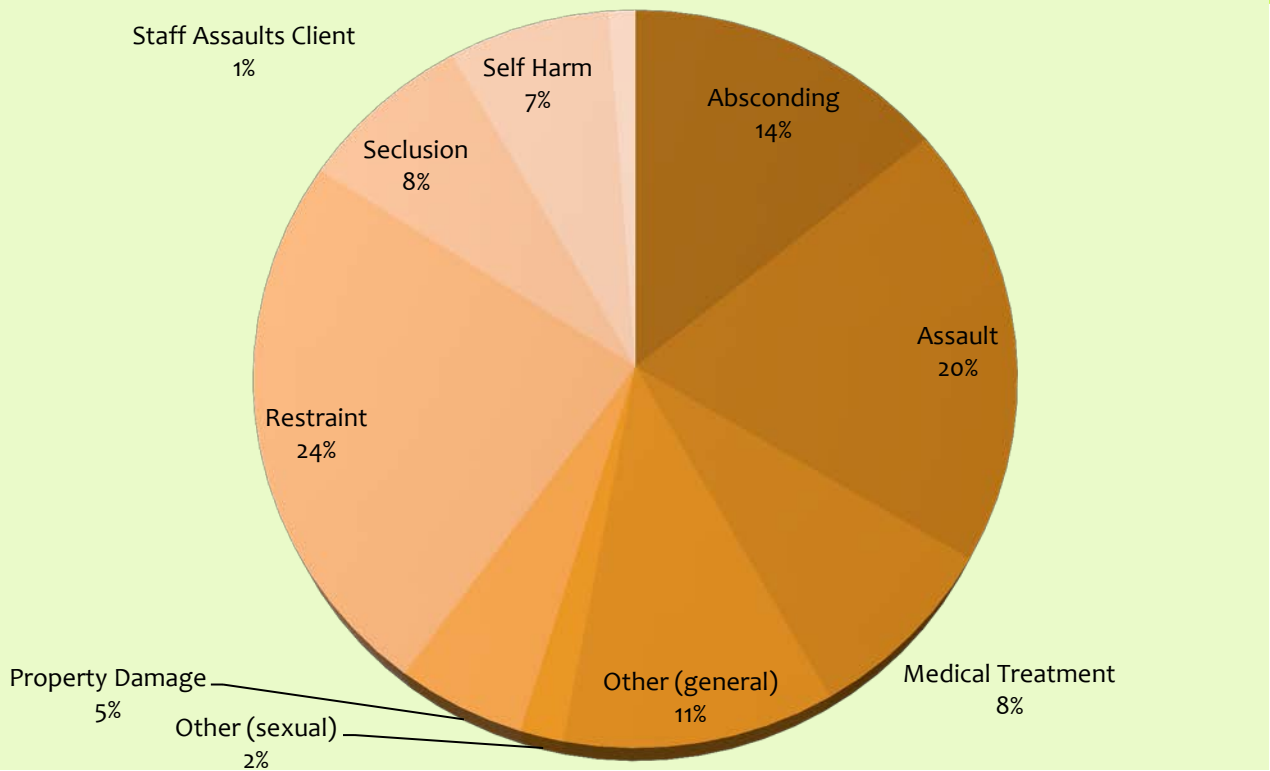
Ethnicity of NIDCA Clients



Number of NIDCA Clients By Type Over Three Years

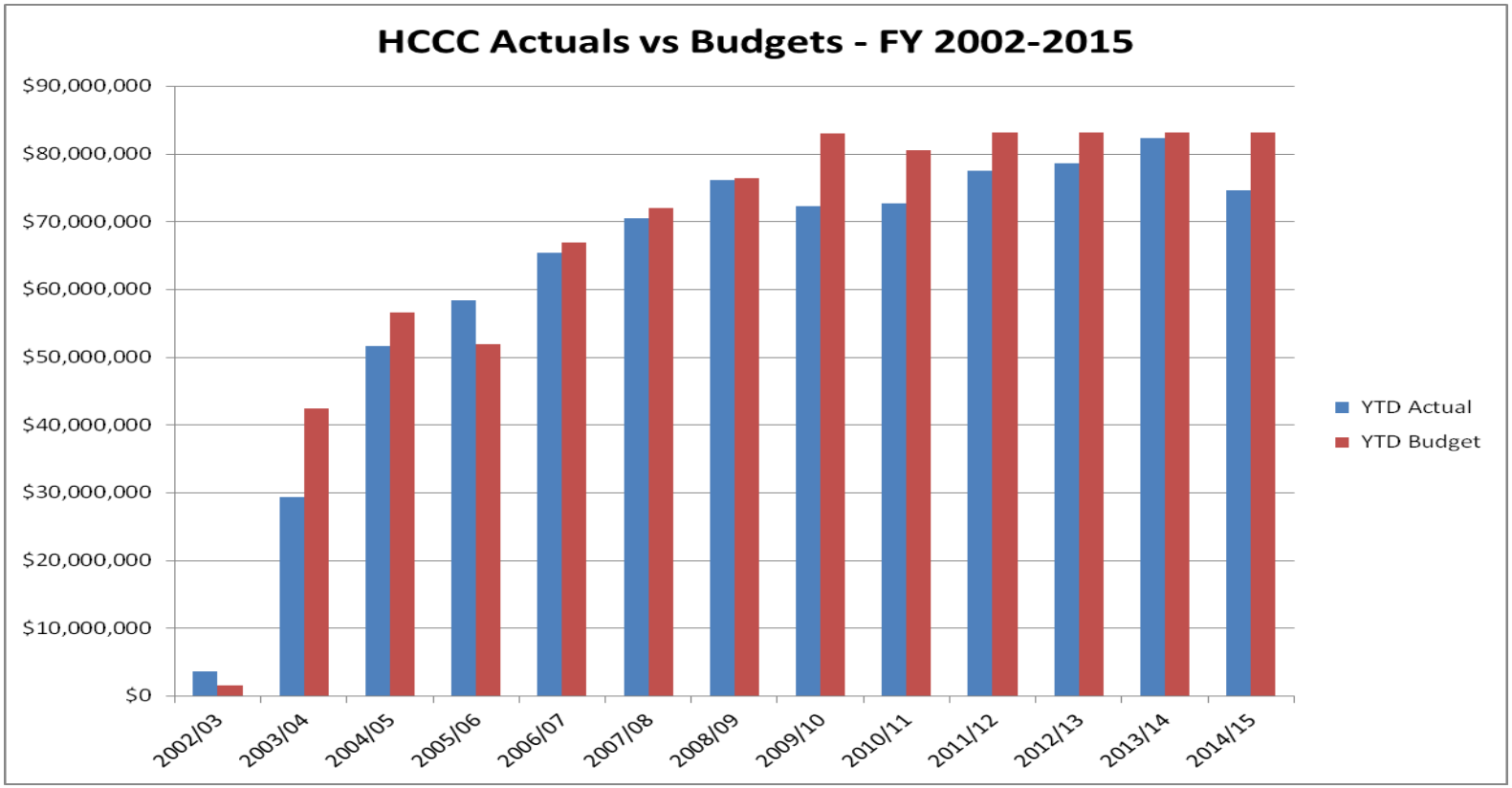


Incident types reported to NIDCA

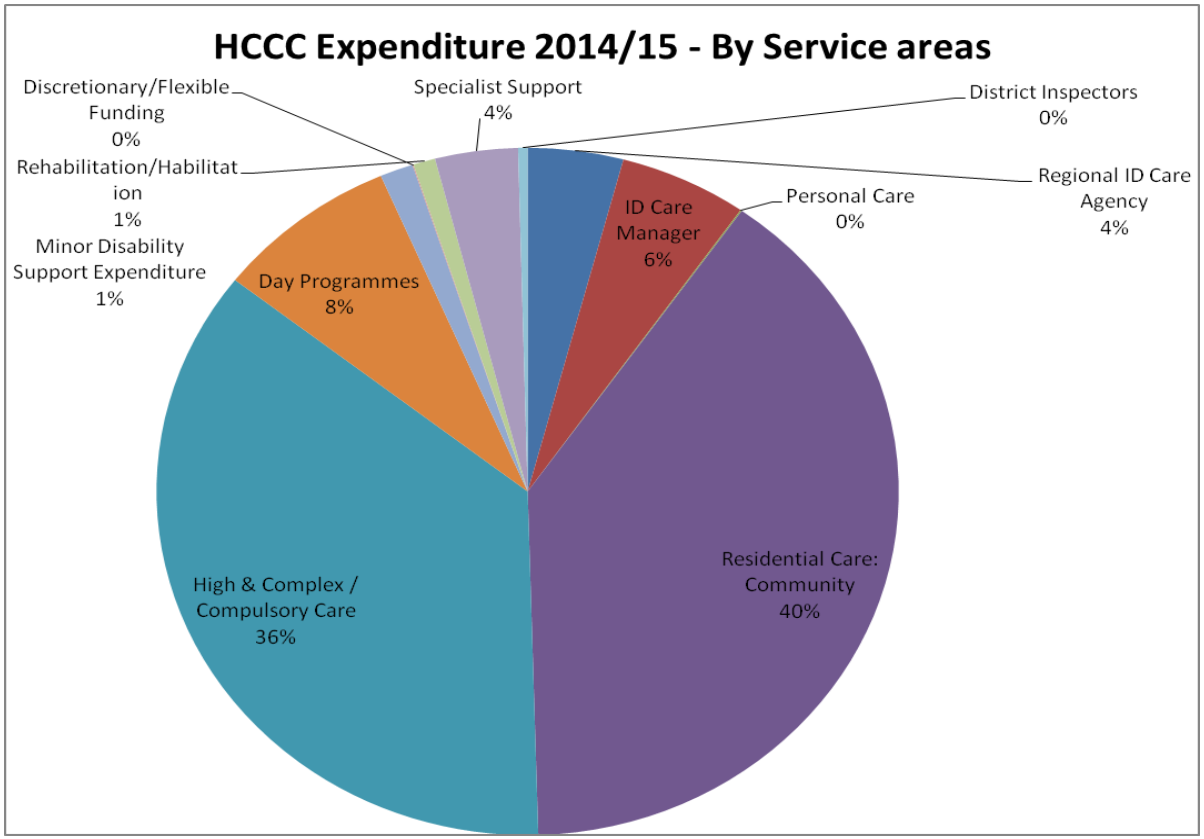


Incident's per annum approx. 700. This graph quarter 2 2015

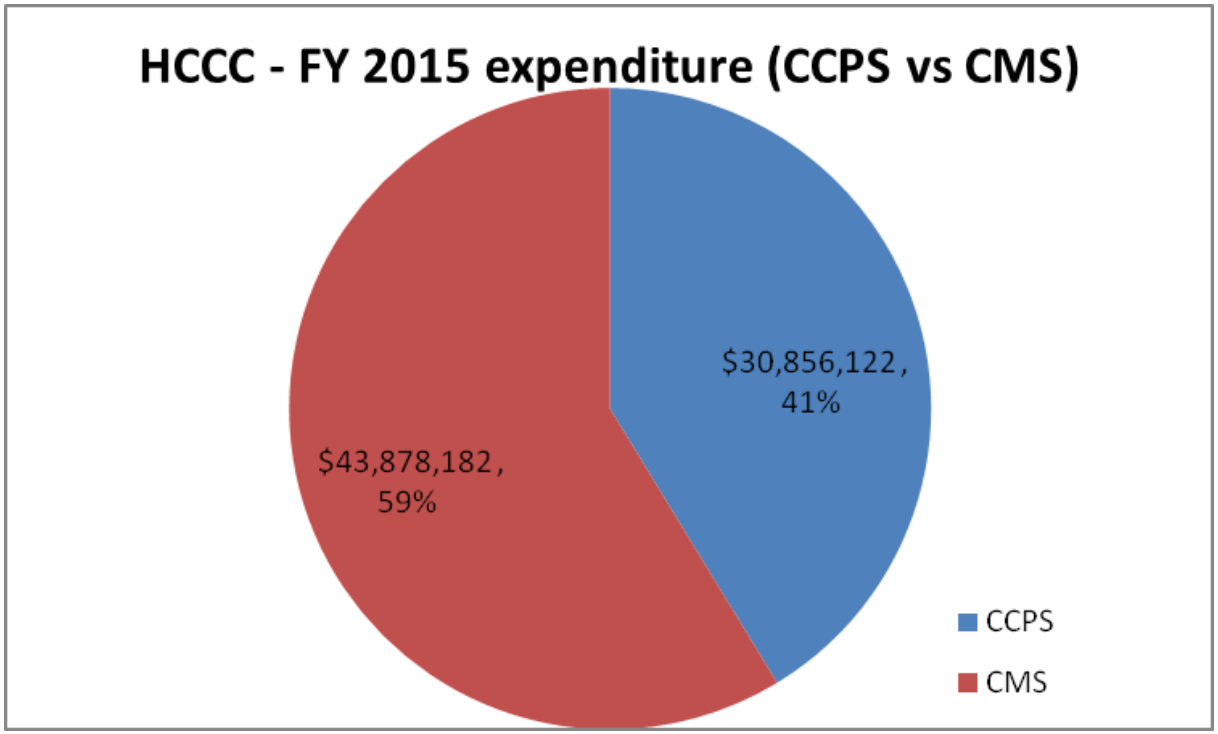
Funding and Spend (10 Years)



Spend Areas


HCCC Expenditure 2014/15 - By Service areas
Discretionary/Flexible Funding 0%
Specialist Support 4%
District Inspectors 0%
Rehabilitation/Habilitation 1%
Regional ID Care Agency 4%
Personal Care 0%
ID Care Manager 6%
Minor Disability Support Expenditure 1%
Day Programmes 8%
Residential Care: Community 40%
High & Complex / Compulsory Care 36%

Expenditure



Legal developments

- 100's of case law examples, but the most significant of all being those that clarify:
  - The legal definition of ID
  - Definition of a facility (not being a clients home)
  - That someone can be detained on the grounds of risk in addition to the grounds of proportionality

Changes in the population itself

- Change in gender mix (more females with serious offending)
- Change in age (younger)
- Change in numbers of people with ID being found unfit
- Change in complexity – group different from anticipated (only scoped in existing services and prison)
- Higher number of particular offender types (sex offences and D&A) Most change is consistent with that in the mainstream offender population.

Where to from here?

Current Initiatives (MoC)

- New Model of Care
  - A new model of care approach has been developed for a more effective strengths based approach. This is designed to produce more long term success for behaviours that challenge.
  - This model better reflects the current demographic and is more individually focussed. This model is more directed toward rehabilitation as opposed to more traditional risk based approach with a focus on containment.
  - Broadly based on the principles of Positive Behaviour Support, Applied Behaviour Analysis with a rights based approach.
  - The new approach has three core strategies: Changing the environment, coaching and implementing short term behaviour strategies. The document provides practical strategies for support workers to implement the new model of care approach.

Current Initiatives

- Review of the Service Specifications and Guidelines
- Developing of a NIDCA (H&C) Bed Strategy
- Legal Compendium (History and Case Law compilation)
- Statutory Amendment (Pending)
- We are interested in people doing research in this area