

Paper ID: 2

## **Elder abuse, undue influence and supported decision making: practical mechanics and inter-relations**

Jane Lonie<sup>1</sup>

<sup>1</sup> Australian Psychological Society / College of Clinical Neuropsychologists

The focus of the presentation is around the practical mechanics of Elder abuse. The following questions are examined;

What is going on cognitively speaking, when the wishes and intents of an elderly client are overborne by another person in a manner amounting to unconscionable conduct?

What level of cognitive ability is required for supported decision making to occur?

At what point does the decision move from being supported to being influenced?

With these questions in mind, the tightly related concepts of capacity, undue influence & supported decision-making are explored in their roles as vehicles for elder abuse using the recent judgment of Fisher-Pollard v Piers Fisher-Pollard [2018] NSWSC 500<sup>[1]</sup> as a basis for illustration.

It is suggested that although the law treats the concepts of legal capacity and undue influence as separate entities, in so far as undue influence presupposes that the individual had capacity, in reality, the two rarely operate in isolation and are all but inseparable in a clinical setting. That is to say, whilst the law requires that capacity must exist for undue influence to occur, undue influence almost always occurs in the context of diminished capacity.

It is further suggested that the distinction between assisting an elderly person to make a decision and unduly influencing their decision (at a practical level) is a subtle one, that should not be overlooked in our rush to conform with the disability rights through legislating the process of supported decision making.

<sup>[1]</sup> Fisher-Pollard v Piers Fisher-Pollard [2018] NSWSC 500.

Paper ID: 4

## **Ignorance of the law of decision making - a recipe for abuse**

Brian Herd<sup>1</sup>

<sup>1</sup> CRH Law

Contrary to popular misconceptions, there are many, and often significant, decisions that need to be made by, or for, a person in an aged care setting.

These decisions can impact on basic human rights especially at a time when a person may be unable to assert their rights and needs to rely on others to do so. The right of someone to make their own decisions or for someone else to make them, and if so, to what extent, is generally poorly understood both by families and age care providers. This tension is exacerbated by the clash of the titans of aged care - empowerment and protection.

This ignorance leads inevitably to family dysfunction, provider inertia and a decline in the quality of life and care for an older person or even, abuse. A well intentioned failure to appreciate the law of substitute decision making is no substitute for applying the law especially when the law is designed to protect the interests of the age care recipient.

Experience tells me that many complaints lodged in the aged care system about the quality of care of a resident stem from a mutual misunderstanding of the law by family members, substitute decision makers and providers.

This presentation will examine examples of these failings and their consequences. It will also argue for the upgrading of education amongst aged care providers and their staff on the 'rules of engagement' for the crucial relationships in the caring landscape of aged care.

Paper ID: 5

## **Advance care planning in residential aged care**

Claire McNamara<sup>1</sup>

<sup>1</sup> Office of the Public Advocate (Victoria)

Advance Care Planning (ACP) is encouraged for people, with decision making capacity, in anticipation of a future when the individual may not have decision making capacity in relation to medical treatment decisions. However, many residents in residential aged care will not have engaged in any form of ACP when they had decision making capacity and yet are now at a stage of life where significant medical decisions may need to be made. How can the preferences and values of these residents be elicited and given effect to? How can family members give voice to the preferences and values of the resident? What role is there for guardians to enable processes to ensure that the rights, will and preferences of residents are given effect to? What educative role can Public Advocates have in ensuring that health practitioners, residential aged care facilities, and the general community understand a decision making paradigm based on rights, will and preferences? These are the issues that the Victorian Public Advocate has spent much time in contemplating how to progress. We will explain the resources that we have been developing to address these issues.

Paper ID: 6

## **At risk and at home: is there an optimal adult safeguarding model?**

John Chesterman<sup>1</sup>

<sup>1</sup> Office of the Public Advocate

Current adult safeguarding mechanisms in Australia consist of a patchwork of laws and practices, involving a variety of agencies in fields that include emergency services, guardianship, health, aged care, disability, and mental health. Recent Commonwealth, state and territory parliamentary committee and law reform commission reports have routinely observed that inadequate safeguarding mechanisms exist for some at-risk adults in the general community. Foremost here has been the Australian Law Reform Commission's report on elder abuse, which identifies a gap in this respect, and which calls for the creation and empowerment of 'adult safeguarding agencies'. This challenge has recently been taken up by South Australia, which is in the process of creating an 'adult safeguarding unit', a development other jurisdictions are watching with interest.

At the same time, the nature of social service provision - most notably in the aged-care, disability and mental health fields - is fast changing to become more market and 'consumer choice' orientated, with services increasingly being provided in private homes. This results in changes that affect the reach and effectiveness of existing safeguarding arrangements and makes even more pressing the need for improved adult safeguarding mechanisms.

This presentation examines the current adult safeguarding environment and considers recent calls for, and examples of, reform initiatives. It closes by arguing that variabilities in existing state and territory safeguarding laws, practices and service cultures make it unlikely that there is one optimal adult safeguarding model for use throughout Australia. Nonetheless, certain core principles should guide much-needed reform.

Paper ID: 7

## **AAC on both sides of the fence**

Fiona Given<sup>1</sup>

<sup>1</sup> NSW Civil and Administrative Tribunal

AAC on Both Sides of the Fence - Fiona Given

The purpose of this paper, is to demonstrate, how AAC - Augmentative and Alternative Communication, is acceptable as a means of communication, by both parties, to applications to the Tribunal, and by members of the Tribunal.

I am going to discuss the case of MHN<sup>[1]</sup>, which was before the Guardianship Division of the NSW Civil and Administrative Tribunal. This case involved a young woman, who was the subject of a guardianship application. She used a speech generating communication device, and I, as general member, of the three member Tribunal panel, also used a speech generating communication device. This shared experience gave me empathy, and, a greater level of understanding, of her circumstances.

The crux of the case, was, whether Ms. MHN had capacity, to appoint an enduring guardian, herself, which is far less restrictive, than having a guardianship order imposed upon you.

<sup>[1]</sup> [2017] NSWCATGD 14

Paper ID: 10

## **Differences in risk factors and abuse patterns across models of familial elder abuse**

Anna Gillbard<sup>1</sup>, Deanne Lawrie<sup>1</sup> and Deidre Venz<sup>2</sup>

<sup>1</sup> Elder Abuse Prevention Unit, UnitingCare

<sup>2</sup> Queensland Health

Although there is little reliable data on the prevalence of elder abuse in Australia, familial elder abuse is increasingly recognised as an insidious problem requiring further investigation to understand risk factors, causes and impacts on victims. Increasing understanding may lead to improvements in prevention and intervention efforts and consequentially better outcomes for older people.

The aim of this project was to examine risk factors and service responses to elder abuse. Quantitative data from the Elder Abuse Prevention Unit's Helpline was utilised to examine factors underlying elder abuse. Cases from an integrated response panel provided further insight into complexity, service responses and difficulties in accessing effective support for victims. The factors driving domestic and family violence are more diverse when victims are older. Analysis of the data identified three distinct models with differing risk factors and patterns of abuse. These models included Intimate Partner Violence, Carer Stress and Other Elder Abuse.

Complex family dynamics and specific vulnerabilities such as a lack of capacity create additional barriers for victims seeking support. To address this, an integrated response panel has been trialled on the Gold Coast since December 2016. Anecdotal evidence identified numerous benefits to collaborating with government and non-government stakeholders to provide more cohesive and holistic responses. Stakeholders are from a multitude of disciplines working under different regulatory and decision-making frameworks. However, consideration and/or integration of varying perspectives and options for intervention increase the ability to manage family dynamics, navigate systems and identify service gaps, leading to better outcomes for older clients.

Paper ID: 11

## **Elder financial abuse: reform imperatives**

John Chesterman<sup>1</sup>

<sup>1</sup> Office of the Public Advocate

A significant amount of elder abuse takes the form of financial abuse, which can range from the exercise of undue influence through to outright theft. There is widespread agreement that if elder financial abuse is to be effectively tackled, reforms are needed to existing laws, industry guidelines, and policing and commercial practices. The Australian Law Reform Commission, for instance, has made recommendations on this topic that include:

- reforming state and territory enduring powers of attorney laws, leading to the possible development of a national register of enduring documents;
- reforming the Code of Banking Practice and the associated industry guideline 'Protecting vulnerable customers from potential financial abuse'.

Panel to discuss:

- examples of elder financial abuse and response practices;
- new banking industry practices and reform ideas;
- law reform developments.

Panel members:

- Lauren Adamson and John Chesterman (Lauren to present), Victorian Office of the Public Advocate (the possibility of nationally-consistent financial enduring appointment laws)
- Alistair Craig and Luke Wright, State Trustees Victoria (examples of elder abuse and new initiatives)
- Natalie Siegel-Brown, Queensland Public Guardian (investigations of abuse of enduring powers of attorney)
- Australian Bankers Association (Amanda Pullinger to advise who will represent the ABA, which has recently revised the Code of Banking Practice and is revising the industry guideline)
- Jo McKinstry, ANZ Customer Advocate (elder abuse initiatives)
- Brendan French, Commonwealth Bank Customer Advocate (can discuss the development of 'Safe and Savvy', a key elder abuse industry publication)
- Alasdair Gall or Dahni Houseman, Victoria Police (initiatives following the Victorian Royal Commission into Family Violence).

Paper ID: 12

## **Application of the professional boundary concept to dementia and elder care**

Sid Williams<sup>1</sup> and Wendy Blaxland<sup>1</sup>

<sup>1</sup> NCAT GD

The concept or metaphor of personal and professional boundaries has been useful in guiding and defining ethical professional behaviour. In this presentation we propose that the principles derived from boundary theory as applied to professional relationships can be usefully applied to relationships between people with dementia and those with whom they interact, including family members and professional carers.

One of the keys to understanding boundary issues is the potential or actual power differential between a client/patient and a professional. A similar power differential or asymmetry often exists between a person with dementia and many other people with whom they interact. This obviously can make the person with dementia vulnerable to abuse, either deliberate or inadvertent. Elder abuse can be avoided and detected earlier if we appreciate both this inequality of power and that boundaries need to be maintained between the values, needs, wishes, desires and actions of, for instance, a carer and a person with dementia.

Similar considerations apply to people with impairments and disabilities other than dementia but this presentation will concentrate on dementia.

Depending on time available the presentation will include:

- A brief history of the boundary concept and its application particularly to the psychiatry profession - where a substantial literature is available.
- Discussion of the distinction between boundary crossing, which may be necessary and beneficial, and boundary violation.
- An anecdote about a professional relationship between a solicitor and a person with dementia
- Some guidelines (incorporating boundary theory) for relationships between people with dementia and others



Paper ID: 13

## **NSW trustee and guardian - here to help**

Jarrad McCarthy<sup>1</sup> and Maree Rice<sup>1</sup>

<sup>1</sup> NSW Trustee and Guardian

NSW Trustee and Guardian provide financial management services to people who have a disability that affects their capacity to make decisions. Whether this is due to mental illness, brain injury, intellectual disability, dementia or vulnerability, NSW Trustee and Guardian manage in excess of 11,000 persons and supervisors in excess of 4,000 private managers.

Maree Rice and Jarrad McCarthy, Legal Officers of NSW Trustee and Guardian, will discuss the role of the NSW Trustee and provide some insight into the work they undertake to ensure that the rights and interests of financially managed clients are protected. The presentation, will discuss the following key themes:

- Financial management orders - Capacity to manage affairs, appointment of financial managers by NCAT and the Supreme Court
- Stakeholders in management - Financially managed clients, family members , carers and health professionals, legal profession, Attorneys, NDIA and NDIS
- Substitute decision making - General principles applicable to management, day to day management of affairs, payment of bills, making financial decisions regarding client's assets, supported decision making, administrative review of decisions
- Legal implications of financial management orders - Prohibits financially managed client dealing with his or her estate, suspends operation of Attorney documents
- NSW Trustee Legal Services Division - Snapshot of work conducted by NSW Trustee and Guardian's Legal Division including case study examples
- Elder abuse - Prevalence of elder abuse within NSW Trustee and Guardian, tips and tricks to avoid elder abuse

Paper ID: 14

## **Elder abuse: twelve reasons an administrator may not get the money back**

Michael Bowyer<sup>1</sup>

<sup>1</sup> Principal Legal Officer, WA Public Trustee

When an elderly person with a decision-making disability is alleged to have had their assets misappropriated, a public trustee or similar body is often appointed as the person's administrator (or financial manager).

Does the administrator get the money back? Not always. There are at least twelve reasons why this doesn't happen. Sometimes, the elderly person is against recovery. But often, it has nothing to do with the person's will and preferences.

Administrators face the daily reality that litigation is risky, costs money and needs evidence. Yet their best witness - the client - usually can't get in the witness box. It may be too late to go to court. It's sometimes said that there are two sides to every story, but there may be three, four or five. Not everything that looks bad *is* bad.

Administrators in WA and elsewhere are currently subject to a "best interests" test. Any future move to supported decision-making won't change the above basic realities.

It can be wonderfully satisfying to get the money back, or at least some of it, and see the difference it can make to a vulnerable person's life. But it doesn't always happen. This talk explains issues with which administrators grapple daily.

Paper ID: 15

## **Elder abuse as perceived from a CALD perspective**

Sonia Di Mezza<sup>1</sup>

<sup>1</sup> ACT Disability, Aged and Carer Advocacy Service (ADACAS)

Different cultural practices, customs and traditions may create situations of elder abuse within the Australian context, whereas in the older person's country of origin such practices may be considered to be normal, acceptable and even legal. Using an exemplative model, comparing the legal and cultural frameworks in Australia with those in Italy, the presenter will highlight how such a situation can occur in relation to Assets for Care cases that may become elder abuse cases within the Australian context, based on research conducted in Italy. The presenter will go on to provide some practical suggestions for supporting and upholding the rights of culturally and linguistically diverse (CALD) people, who suffer elder abuse, based on her own extensive experience of advocating for the rights of older people from CALD backgrounds. She will shed some light on why elder abuse occurs within CALD communities, as well as the role advocacy can play in preventing elder abuse or support older people from CALD backgrounds in being able to access their human rights. By acquiring a greater understanding of a person's cultural context in their country of origin a better understanding can be acquired of why the older person and family may think that the situation of elder abuse is entirely acceptable. The presenter's premise is that such an understanding is the starting point to taking preventative action as well as finding solutions to support older people from CALD backgrounds who are at risk of or who face elder abuse.

Paper ID: 16

## **Recognition, rights and respect: a model for responding to elder abuse in Victoria**

Helen Rushford<sup>1</sup>, Warren Fuge<sup>2</sup>, Mandy Strange<sup>3</sup> and Selina Nivelles<sup>4</sup>

<sup>1</sup> Melbourne Health

<sup>2</sup> Western Health

<sup>3</sup> Peninsula Health

<sup>4</sup> Monash Health

There is little evidence on the prevalence of elder abuse in Australia, with estimates ranging from 5-14% of the population over the age of 65 experiencing abuse internationally. It is largely underreported due to a lack of understanding by service providers of the factors and nature of elder abuse and many older people do not recognise their experience as family violence, or are reluctant to report for fear of losing family relationships.

The 2016 Victorian Royal Commission into Family Violence (RCFV) identified that health professionals 'play an important role in identifying, reporting and preventing elder abuse' and that 'hospitalisation can provide a window of opportunity for intervention'.

In response to these findings, the Victorian Department of Health and Human Services (DHHS) implemented the *Integrated Model of Care for responding to suspected elder abuse* project at five Victorian health services. The model has four key components that deliver primary, secondary and tertiary prevention activities within an empowerment framework that champions the voice of the older person. These four pillars aim to raise professional and community awareness of elder abuse, build the capacity of the health and community workforce to respond appropriately and provide therapeutic pathways for older people and their families and carers that are respectful of the older person's choices.

This presentation will provide an overview of the model and use case studies to highlight the importance and effectiveness of timely, coordinated and client driven interventions.

Paper ID: 17

## **Supported decision-making in practice: a training module for aged care providers**

Sue Field<sup>1</sup>, Craig Sinclair<sup>2</sup> and Carolyn Smith<sup>3</sup>

<sup>1</sup> cognitive Decline Partnership Centre

<sup>2</sup> University of Western Australia

<sup>3</sup> NSW Public Guardian

Although Australia is a signatory to the UNCRPD, Article 12 - Equal Recognition before the law - it is apparent that compliance with the Convention, without the appropriate frameworks will continue to be difficult to implement.

The Cognitive Decline Partnership Centre funded Research Project 'Supported Decision Making in Dementia' has been undertaken by a multidisciplinary group of investigators, including consumer representatives, clinicians and researchers with backgrounds in psychology, medicine, law and aged care. The team have worked closely with advisory groups across Western Australia, New South Wales and South Australia, to better understand the issues relating to supported decision-making for people living with dementia.

Based on the research findings included in the many outcomes of the project have been a policy guideline for aged care providers and a consumer guideline focusing on how to support those with cognitive impairment.

This presentation will highlight two training packages that have been developed for those working in the aged care sector. Pilot sessions for both aged care providers and trainers have been conducted in three jurisdictions, Western Australia, South Australia and New South Wales.

The presentation will guide the audience through the steps involved in the development of the packages, the content and format and the evaluations from participants.

Paper ID: 18

## **Queenslands public guardian responds to and calls out elder abuse**

Natalie Siegel-Brown<sup>1</sup>

<sup>1</sup> Office of the Public Guardian (Qld)

The Office of the Public Guardian (OPG) in Queensland is provided with the power to investigate allegations of abuse, neglect, exploitation, inadequate or inappropriate decision-making arrangements related to adults with impaired capacity.

When it comes to elder abuse, what makes the Queensland OPG different to anywhere in Australia, and as far we are aware, the World, is its unique powers to take action against those allegations when substantiated. The Public Guardian can suspend a Power of Attorney immediately and insert herself as personal and health attorney (and the Public Trustee as financial attorney) for up to 3 months. She can also cross-examine witnesses and apply for a warrant to remove a person who is at immediate risk of harm.

Approximately 80% of investigations conducted by the OPG each year, over the last 3 years, related to an adult aged 65 years where allegations of elder abuse were raised.

Through its interactions with perpetrators and victims, and the services and networks that operate around them, the Office has observed trends in behaviour and signposts of abuse, some of which are the lesser known, but could be used to inform wide scale policy and program change.

This presentation will look at those trends and recommend how these might inform the development of intervention strategies; for example changes in the practices of banks and residential aged care facilities.

The presentation will also discuss some key steps identified by the Public Guardian in raising awareness in the community of what constitutes elder abuse.

## **A new model of special needs financial planning in Hong Kong**

Rebecca Lee<sup>1</sup> and Lusina Ho<sup>1</sup>

<sup>1</sup> Faculty of Law, The University of Hong Kong

For years, the parents of individuals with cognitive impairment live with an agonising worry: after the parents' passing, how to find a reliable manager of the assets devoted for their children's care? In Hong Kong, local Disabled Persons Organizations (DPOs), in the face of inadequate financial protection mechanisms, partnered with the academia to participate in much-needed reform initiatives. The successful lobbying led to Hong Kong Government's decision to establish a Special Needs Trust (SNT), an affordable trust designed specifically for persons with special needs. The SNT is a relatively recent legal device in other jurisdictions that pools together funds contributed by individual participating settlors for management and investment to allow the sharing of fees, thereby reducing the fees paid by individual participants. Under the current model proposed for Hong Kong, which is due to be launched in early 2019, the SNT would be the first of its kind internationally in being led and managed by the government.

This paper has first reviews the success of the advocacy of DPOs and academic scholars for the establishment of an SNT in Hong Kong. It then examines the innovations and inadequacies of the SNT model in Hong Kong. It is hoped that the experience of Hong Kong in lobbying the government to adopt an innovative model to advance protection of the disability community could be useful reference for jurisdictions planning to refine financial planning mechanisms for people with special needs.

Paper ID: 20

## **Supported decision making for people who communicate differently**

Joanne Watson<sup>1</sup>

<sup>1</sup> Deakin University

Australia's signing and ratification of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) represents an important step towards promoting, protecting and ensuring human rights for Australians with disability. Article 12 of the Convention challenges the use of substitute decision-making or guardianship. In response to the UNCRPD, supported decision-making is emerging as an alternative paradigm to be employed in lieu of substitute decision-making, consistent with signatory nations' obligations under Article 12 of the UNCRPD. However, what does supported decision making look like? How can it be implemented in practice? What does it mean for people with disability who communicate differently and those who support them? Is the human right to legal capacity and personhood achievable for everyone? This workshop will focus on supported decision making practice and provide evidence based strategies for supporting people with complex communication and support needs to express their will and preference within the context of decision making, and by so doing move closer to realising their right to legal capacity.



Paper ID: 21

## **Can I wear two hats?**

Simon Brown<sup>1</sup>

<sup>1</sup> Carers Queensland

The American author Catherynne Valente writes, "*hats have power. Hats can change you into someone else*". This phrase has relevance to well-intentioned family members and carers appointed under an enduring document. By agreeing to act as an adult's attorney, do carers consider that the role of an attorney/enduring guardian and carer differ and potentially conflict? This presentation will pose the question "*can I wear two hats?*" and is it appropriate act as an adult's attorney and carer and if so, how can this affect vulnerable adults in our community?

This practiced-based presentation will explore issues that surround the completion and use of enduring documents. Topics discussed in the presentation will include:

- Who should be my enduring attorney?
- Is it a simple document?
- Specific terms.
- Conflicts.
- Multiple decision-making documents.

The issues raised will have relevance to all jurisdictions that utilise enduring documents.

Annually, Carers Queensland's *Guardianship & Advocacy Program* (GAP) assists over 350 family carers through Queensland's guardianship and administration regime. Approximately half of the work undertaken by GAP advocates involves advice on the completion and use of enduring documents, such as EPOAs, Advance Health Directives & Advance Health Directives (Mental Health). GAP advocates regularly support and appear on behalf of carers before the Queensland Civil & Administration Tribunal.

Paper ID: 23

## **Requiem for capacity (and decision-making): the aspiration of art 12 (3) CRPD in NDIS land**

Jason Abraham<sup>1</sup>

<sup>1</sup> Queensland Advocacy Incorporated

The NDIS is ushering the dawn of a new opportunity for many people living with a disability to become actively involved in decisions making that affects their lives. The Convention on the Rights of Persons with a Disability (2006) ('CRPD') is the international instrument which agitates the collective view of the extent to which human agency should transcend the cost and operational barriers of allowing people with a disability to engage meaningfully in matters concerns them.

By way of case studies we will explore why the system of substitute decision making via the legal instruments of Guardianship and Administration are not suitable for a number of groups within the community. 1) Complex decision-making and justice - Challenges to the traditional notions of capacity and the margin of appreciation needed to afford people the dignity of risk. 2) Outsourcing decisions and enduring documents - the need for certainty 3) Resources for the lonely and isolated - when family and friends are gone 4) Collective decision making verse individual decision making - a cultural perspective.

Paper ID: 24

## **The role of article 12 of the UNCRPD within guardianship practice in Victoria**

Joanne Watson<sup>1</sup> and Julie Anderson<sup>1</sup>

<sup>1</sup> Deakin University

There is a call for the international abolition of guardianship law, most notable in the United Nation's General Comment on Article 12 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). Despite this call, there appears to be limited understanding of how contemporary guardianship hearings are carried out in practice. This study aimed to understand the application of Article 12 within the context of guardianship hearings in Victoria, particularly in relation to people with severe cognitive disability who communicate informally.

Five decisions about guardianship made by the Victorian Civil Administration Tribunal (VCAT) relating to people with severe cognitive disability, prior to Australia's signing of the Convention in 2008, were selected from the Australian Legal Information Institute database. These decisions were compared to seven decisions relating to the same population post 2008. The text relating to each of these 12 decisions was analysed.

The key drivers to decisions were overwhelmingly found to be based on VCAT members', families' and medical professionals' opinions of what they believed was in the person's best interest, rather than their will and preference. This is in clear contrast with Article 12 of the UNCRPD which requires a de-emphasis on the concept of 'best interest' and an emphasis on ascertaining a person's will and preference via supported decision making,

The Guardianship and Administration Bill 2018 was introduced to the Victorian Parliament in March 2018. This reform emphasises the importance of a person's will and preference, rather than perceived best interest, and has the potential to bring Victoria's guardianship laws in line (but not fully) with Article 12 of the UNCRPD.

Paper ID: 25

## **Supported decision making - translating the framework into lived experience**

Helen Connolly<sup>1</sup> and Kate Rea<sup>2</sup>

<sup>1</sup> ADACAS

<sup>2</sup> independent

Supported decision making has the potential to be a transformative tool for some individuals in our community enabling universal exercise of human rights. This workshop describes how translating the theory into practise has been explored in the ACT and led to development of a Strengths - based Network model. This uses extant networks, based on the expressed values, will and preference of the individual, and, in the main, does not require formal identification of "decision supporters". Aiming for support being available when and where it is needed and resting on the notion of spectrums of support, responsive to time and decision specific needs, a process for mapping a support network and using the most individually suitable resources to articulate and record the decision if required, has been piloted with more than 30 individuals who require support in decision making. This group has included those with support needs related to intellectual disability, fluctuating support needs, (in particular mental ill health) and increasing support needs (neurodegenerative conditions). Working collaboratively with individuals requiring support, carers, workers, family and public guardians the barriers to using supported decision making and the practical benefits in enabling rights are being tested. Participants will map their own support networks and apply it to a decision to further discussion of safeguards and barriers. This workshop will outline the development of this model and the resources developed as tools to explore its' application as a viable option within the spectrum of decision making. Participants will map their own support networks and apply it to a decision to further discussion of safeguards and barriers.

Paper ID: 26

## **Playing catch up: how substitute decision making systems can learn from inclusive practice models**

Justine O'Neill<sup>1</sup> and Alanna Julian<sup>1</sup>

<sup>1</sup> Council for Intellectual Disability

In the new world of choice and control, is it reasonable for substitute decision making systems to remain stagnant when many people with cognitive impairment are sprinting forwards?

Concerns about risks in decision making can suffocate innovation and give an impression that supported decision making is still a concept, not a reality.

The challenge for substitute decision making agencies is to adapt with the times, to see people with cognitive impairment as filled with potential, and to update laws and structures to enable maximum participation by the people they represent or seek to assist.

Skill building resources, inclusive practices and participation support are tools that can be used to develop individual capacity, but also to develop capacity in relationships and in the community.

CID's practices embody the Australian Law Reform Commission's recommended supported decision making principles. Our model of practice directly confronts risk, but from an enabling perspective. CID's advocacy leadership work enhances the concept of supported decision making beyond an individual's circumstances to include influence on decision making about systems.

We will discuss and illustrate concrete examples of inclusive practice that ensure participation and develop skills, not only for the person but for the supporter and the broader community.

We will argue it is time to see inclusive practice as a foundation of supported decision making, and an approach that could help substitute decision making agencies find a way to truly involve people with cognitive impairment in decision making about their lives.

Paper ID: 27

## **Mediation and supported decision making - role in preventing elder abuse**

Anne Gale<sup>1</sup>

<sup>1</sup> Public Advocate of South Australia

The South Australian *Advance Care Directives Act 1993* (the Act) established the Dispute Resolution Service (DRS), operated by the SA Office of the Public Advocate (OPA).

The *Advance Care Directives Act 1993* (SA) includes principles of supported decision making and since 2016, the SA OPA has undertaken 3 projects in relation to implementing supported decision making.

This presentation will outline the research projects and the work of the dispute resolution service with a focus on how they contribute to preventing, detecting and responding to elder abuse.

The Dispute Resolution Service offers mediation to resolve disputes between families, substitute decision makers, and other interested parties in relation to Advance Care Directives. The mediation model upholds the rights of the person who made the advance care directive, ensuring that their voice is heard and that their will and preferences are fully considered in the decision making and mediation process.

The Dispute Resolution Service educates families and interested parties about their roles which assists in preventing abuse but it also identifies cases of abuse, most often, in relation to an older person (with the average age being 80 years of age).

This presentation will outline how supported decision making principles in the *Advanced Care Directives Act 2013* are implemented in supported decision making principle and the service detects, responds and prevents elder abuse.

Paper ID: 28

## **A paradigm shift in medical treatment decision making: best interests to preferences and values**

Sonia Gardiner<sup>1</sup> and Nicolina Scarcella<sup>1</sup>

<sup>1</sup> Office of the Public Advocate

In Victoria on 12 March 2018, the *Medical Treatment Planning and Decisions Act 2016* came in to effect, with a notable focus on upholding patient rights and promoting patient autonomy. The Office of the Public Advocate has long advocated for this overarching philosophy behind the new legislation.

The Act promotes the Guiding Principles of the Convention on the Rights of Persons With Disabilities, with a number of Articles activated, such as ensuring no one is subjected to medical treatment without free and full consent, the patient's integrity is protected and the patient's medical treatment is proposed and undertaken free of discrimination.

Two of the new functions the Public Advocate has under the Act, is to educate and inform public awareness and understanding of the issues in relation to medical treatment decision making; and to be a medical treatment decision maker (without having to be appointed as a guardian) for patients who lack decision making capacity.

Our presentation will encompass how the Public Advocate's office has refocused their education to the public from a "best interests" principle for medical decision making, to the current principle of "preferences and values". Our presentation will also address how the Public Advocate's delegates apply the principle of preferences and values, which directs that the decision made would be that which the patient would have made if they had decision making capacity.

Our presentation will examine how this paradigm shift in education and decision making is a positive outcome for patients, which leads to decisions that better respect the patient's autonomy and individuality.

Paper ID: 29

## **Living with choice and control -NDIA and substitute decision making**

Helen Connolly<sup>1</sup> and Claire McCormick<sup>1</sup>

<sup>1</sup> ADACAS

The ACT was the first jurisdiction in Australia to be fully covered for participants of all ages, with rollout achieved by July 2017. The ACT Disability, Aged and Carer Advocacy Service (ADACAS) has been involved for more than 5 years in preparation, planning, appeals and reviews and as a provider of support co-ordination. The intersection of a scheme which rests on self-determination and aims to enhance the choice and control of individuals with disability with existing legislations evidences gaps. The practices and legislation around substitute decision making combined with NDIS implementation reveals tangled decision making processes. This paper will explore the application of the ADACAS-developed "Network Model" of decision support as a tool to maintain the expressed value, will and preference of the individuals at the centre of the NDIS plan.



Paper ID: 30

## **Interaction with health services - using the legislation**

Helen Connolly<sup>1</sup> and Christina Thompson<sup>2</sup>

<sup>1</sup> ADACAS

<sup>2</sup> Public Trustee and Guardian, ACT

The ACT Disability, Aged and Carer advocacy service (ADACAS) is nearing completion of an extended Information Linkages and Capacity (ILC) grant funded project about the place of supported decision making in health care. Investigating the barriers to accessing health services experienced by people with disability, older persons and people with mental ill health reveals that interaction with health services is often the crunch time for implementation of substitute decision making which lasts well beyond the health event which initiated it. One response through this project to concerns raised by people with disability, family and community was a community information session - sponsored by a family and community group and jointly delivered by ACT Disability, Aged and Carer Advocacy Service (ADACAS) and the ACT Public Trustee and Guardian (PTG). Discussion of the options available within existing ACT legislation highlighted that practise remains predominantly limited to a binary decision making capacity/no capacity response. The collaboration of PTG and ADACAS highlights the gap in translating legislation into practise and this paper will use case studies to further conversation about the first steps in implementing change.

Paper ID: 31

## **Safeguarding misuse of power of attorney**

Helen Connolly<sup>1</sup> and Pauline Willenberg<sup>1</sup>

<sup>1</sup> ADACAS

The ACT Disability, Aged and Carer Advocacy Service (ADACAS) is an independent community organisation that provides free advocacy and information to individuals and raises issues of concern within our community to drive systemic change in responses to people with disability, older people, people with mental ill health and carers. The place of advanced care documents as tools to protect human rights is often encouraged. This paper will explore, through recent case examples in the ACT, the risks attached to the use of Powers of Attorney, with particular reference to elder abuse, and discuss some possible safeguards for the vulnerable population group with whom we work.

Paper ID: 35

**It is all about relationships. a holistic case management approach to elder abuse prevention.**

Cassie Causton<sup>1</sup>

<sup>1</sup> Relationships Australia Queensland.

Relationships Australia Queensland (RAQ) has been providing relationship counselling and mediation services to individuals and families for over 65 years. In June 2018 RAQ commenced provision of the Elder Abuse Prevention Support Service (EAPSS) in five locations in both metropolitan and regional areas in Queensland. At the core RAQ's unique service model is the notion of safeguarding and upholding rights, preventing abuse and promoting the autonomy of older Australians. RAQ brings a focus to elder abuse that understands the increasing complexity of family structures and relationship dynamics that precipitate, and follow, elder abuse. RAQ's response to elder abuse, and the prevention of elder abuse, broadens the traditional legal response to encompass a holistic case management focus with relationships at its core.

This presentation will contribute to the national dialogue about elder abuse in Australia and how best to safeguard and promote the needs of vulnerable older Australians at risk of, or experiencing elder abuse. RAQ will share their preliminary learnings from the first 9 months of delivering EAPSS; with particular emphasis on case studies that demonstrate how RAQ's service model responds to the needs of older people who have impaired capacity and are experiencing, or at risk of experiencing, elder abuse.

## **Ending institutional abuse in aged care**

Mary Burgess<sup>1</sup>

<sup>1</sup> Office of the Public Advocate

The Australian Government has been slow to act to regulate the use of restrictive practices (RPs) in residential aged care. This inaction occurs amidst seemingly strong agreement among those advising the government that regulation should occur.

Australians are appalled by aged care residents being locked in rooms, tied up, strapped to beds, drugged with sedatives and antipsychotic medications and monitored by cameras, sometimes with little regard for the person's welfare or human rights. While RPs can sometimes be needed to manage challenging behaviours in older people, they can also be used to coerce or punish, or because of resourcing issues.

Inappropriate use of RPs constitutes institutional elder abuse which can cause serious harm to an older person and be devastating for their family and friends.

A national response is needed to protect aged care residents from abuse, and workers from potential criminal charges such as unlawful imprisonment, assault and manslaughter. Australia's lack of policy and legislation regulating RPs is lagging behind other Western countries.

The Australian Government should consider the legal and service quality frameworks for RPs implemented by international jurisdictions and Australian States/Territories e.g. Queensland has a comprehensive regulatory framework for the use of RPs in disability care, which has resulted in greater transparency, consistency, professionalism and oversight of these practices.

Regulation of RPs will help protect the legal and human rights of older Australians. However, reduction and elimination of the use of RPs will not be achieved without also addressing culture, staffing and other operational issues.

## **Safeguarding the health of NDIS participants**

Mary Burgess<sup>1</sup>

<sup>1</sup> Office of the Public Advocate

Australian research shows that many deaths of people with cognitive and intellectual disability living in supported accommodation have been unexpected and potentially avoidable. It exemplifies the adverse health outcomes experienced by some people with disability due to inadequate support to manage their health issues, poor access to adequate medical assessment and health care, and lack of training for disability support staff and medical/health care professionals.

The development of comprehensive and person-centred NDIS plans is critical to improving health and longevity outcomes for people with cognitive and intellectual disability. At minimum, NDIS plans should incorporate the disability supports required to address a person's health care needs, provide for adequate coordination of essential health care supports, and support to attend medical and therapeutic appointments.

If NDIS plans do not adequately address people's core needs, including their health care needs, there is a risk of catastrophic outcomes. This will have significant consequences for NDIS participants and their families, and will seriously impact the credibility and effectiveness of the scheme.

Urgent action is required to establish systems that improve the health and longevity of people with disability. NDIS planning and review processes are fundamental to achieving this under the NDIS. Consideration must be given to how NDIS plans can be developed to reduce the occurrence of foreseeable catastrophic health events for participants. Better integration and communication between mainstream health services and the NDIS and other disability support services would also contribute to improved outcomes for people with disability with complex health conditions.

## **Benefits of a health justice partnership to address elder abuse**

Jillian Freeman<sup>1</sup>

<sup>1</sup> St Vincent's Health Network Sydney

Elder abuse is a complex and challenging issue that is under-detected and under-reported in Australia. Understanding of its prevalence in our community is complicated by the multiple barriers preventing older people from disclosing abuse and seeking help.

A Health Justice Partnership (HJP) is a partnership between legal and health services whereby a lawyer is integrated into a hospital or other health setting to better reach vulnerable people who would otherwise likely not access legal assistance. In NSW, St Vincent's Health Network and Justice Connect, a community legal centre, have established a HJP to address elder abuse.

In the context of guardianship, inclusion of a lawyer on the health team helps to address elder abuse in multiple ways:

- Establishing an older person's legal capacity is critical in determining how to respond to abuse. Where this is unclear, the lawyer plays a role in assessing the person's capacity to provide legal instruction.
- Where capacity exists, the lawyer can provide direct legal assistance to patients to establish robust substitute decision-making arrangements to prevent future abuse.
- The lawyer additionally plays a role in supporting staff, through delivery of education to build capacity to identify legal issues amongst patients. This enables staff to devise appropriate strategies to respond where patients without capacity are experiencing abuse and prevents unnecessary restrictive measures including applications to NCAT.

Through collaboration between the lawyer and hospital staff, the HJP model utilises the opportunity of a hospital admission to provide a holistic and multidisciplinary response to elder abuse detected amongst patients.

## **Tips for an effective hearing**

Clare Endicott<sup>1</sup>

<sup>1</sup> QCAT

Applications in the guardianship list at QCAT are decided by the hearing member making a finding as to the facts of the case, based on evidence, and the application by the hearing member of the relevant law. The overwhelming majority of hearings do not involve legal representatives for any of the parties.

Despite information about the form and content of a hearing being available to the parties before a hearing is held, many of the parties are unprepared for the hearing or have sent inappropriate and unhelpful information to the tribunal. This can result in essential evidence not being presented as the parties have not focused on the issues to be decided.

This presentation sets out some tips for an effective hearing from the prospective of the parties as well as the tribunal. It will also deal with some less common avenues that can be used to bring an end to an unmeritorious application so that a vulnerable adult is not subjected to an unnecessary hearing.

These tips are apposite for applications involving elder abuse as well as applications involving persons of a younger age who are subject to exploitation and abuse. However, as older people are more likely to have financial resources that a younger person does not have, the focus of the presentation will be how to present an effective case involving issues of elder abuse.

Paper ID: 40

## **Interactive role play - elder abuse: a specialist service promoting human rights**

Cybele Koning<sup>1</sup> and Helen Wallace<sup>1</sup>

<sup>1</sup> Seniors Legal and Support Service, Caxton Legal Centre

Elder abuse is a human rights issue. Older people are vulnerable to abuse, mistreatment and exploitation. Interventions should simultaneously promote a life free from abuse, and support an older person's right to self-determination. A social worker-lawyer intervention model represents a highly effective first response to elder abuse. This model recognises that elder abuse exists in a complex matrix of psychosocial and legal issues. The older person is empowered to choose the social supports and legal interventions they prefer to address the abuse they are experiencing. A highly evocative role play will instantiate this multi-disciplinary model. Audience reflection will be captured and linked to model variations which further promote an understanding that older Australians are specific rights holders and agents of change in eliminating elder abuse.



Paper ID: 41

## **Walk with me, talk with me -practice within koori communities**

Jacinta Thorne<sup>1</sup>

<sup>1</sup> Office of Public Advocate

### **Context:**

The Office of the Public Advocate (OPA) set about developing a Koori Inclusion Action Plan (KIAP) as part of the Department of Justice's Koori Inclusion Action Plan.

The OPA KIAP 2015 - 2018 was a culmination of work that flowed out of an OPA steering committee and input from members of Victoria's Koori communities and organisations. The OPA KIAP identified a number of areas where OPA needed to improve connections and service delivery to Koori communities in Victoria.

The members of the KIAP were committed to and energised by the issues identified and what success would look like. This was evidenced by the completion of the majority of issues identified by mid 2017 resulting in a new OPA KIAP being developed - 2017 -2019.

Out of our practice came the need to develop a Practice Guideline on culturally sensitive practice within Koori communities. Consultation occurred within OPA and with Koori communities and key stakeholders. The practice guideline is currently in production and will be a resource used across OPA and updated as required.

### **Content:**

1. Overview of KIAP and the Practice Guideline.
2. Case example to illustrate how we have used the practice guideline when working with a represented person and the people around them.

Key themes of the case study will explore: Upholding rights, preventing abuse and promoting autonomy

Paper ID: 42

**Legislation vs practice. does australian guardianship practice have an image problem?**

Anita Smith<sup>1</sup>

<sup>1</sup> VCAT

International comparators of guardianship legislation expose Australian guardianship systems to criticism from the UNCRPD Committee and other commentators. But these comparisons may lack an appreciation of the way Australian guardianship legislation operates and the historical biases in Australian law towards the presumption of capacity, promotion of personal dignity and the domain specific nature and operation of orders.

This presentation will address Australia's 'image problem' and will promote the supportive decision-making practices that have developed under the guise of substitute decision-making laws in Australia. The paper will raise questions of whether there is a problem of mere nomenclature or fundamental jurisprudence?

Paper ID: 43

## **An idea of adult support and protection legislative system: a comparative law study**

Yukio Sakurai<sup>1</sup>

<sup>1</sup> Yokohama National University

We face a serious ageing society worldwide except Africa. The population of the elderly with dementia is sharply increasing as adults live longer. We thus need some effective public policy to protect the elderly with dementia as a universal design. Nowadays adult support and protection legislative system is gradually progressing in Europe, Australia, Canada and the US in order to protect vulnerable adults including the elderly with dementia from possible risks for abuse including financial exploitation, neglect, and self-neglect. In Japan, the adult guardianship system utilization promotion plan was approved by the cabinet in March 2017 to promote adult guardianship system in community as one of necessary measures. It is however assumed that we need various public policy measures so that citizens may choose whatever is suitable and necessary by their own choice because an individual or relational autonomy and the right to self-determination are the most important. In advanced states, adult support and protection legislative system, through a comparative law analysis, seems to refer to a comprehensive package of laws aiming at protecting vulnerable adults by the least restrictive measures as long as it is necessary, taking adults' will and preferences into consideration. In other words, human rights are to be highly respected. The other importance is the balance between state responsibility and citizen rights. An idea of adult support and protection legislative system is valuable to study further and adopt in Japan as a regional design in the future.

Key words: adult support and protection, comparative law study, autonomy

Paper ID: 44

## **Embedding supported decision-making in the national plan on elder abuse**

Sue Field<sup>1</sup>, Craig Sinclair<sup>2</sup>, Meredith Blake<sup>3</sup>, Sue Kurrle<sup>2</sup> and Kathy Williams<sup>2</sup>

<sup>1</sup> cognitive Decline Partnership Centre

<sup>2</sup> Cognitive Decline Partnership Centre

<sup>3</sup> University of Western Australia

In 2017, the Australian Law Reform Commission's report 'Elder Abuse - A National Legal Response' recommended that the Commonwealth Government develop a National Plan to ensure a coordinated response to addressing the scourge of elder abuse across Australia. There is high-level agreement that the National Plan should address five overarching goals:

- i. Promote the autonomy and agency of older people
- ii. Address ageism and promote community understanding of elder abuse
- iii. Progress national consistency
- iv. Safeguard at-risk older people and improve responses
- v. Build the evidence base

A consultation paper aimed at informing the National Plan on elder abuse was released during 2018, identifying a number of priority action areas and initiatives, including 'Building skills in supported decision-making'. A recent project also reviewed relevant resources for supported decision-making in the context of preventing or responding to situations of elder abuse. Given this convergence of research and practice development, our Cognitive Decline Partnership Centre funded research team convened a facilitated forum, aimed at bringing together key stakeholders, to generate recommendations for the inclusion of supported decision-making in the National Plan on elder abuse.

Thirty six participants attended a day-long forum in October 2018. Participants represented government departments and agencies, professional colleges, consumers (advocacy organisations and those with direct lived experience), aged care sector peak bodies, researchers and policy makers. This presentation will discuss the key recommendations, and plans for ongoing implementation of supported decision-making in the context of older Australians, including those with cognitive impairment. A detailed summary of the proceedings from the forum are provided online at <http://sydney.edu.au/medicine/cdpc/resources/supported-decision-making.php>.

Paper ID: 45

**Are Korean societies on the road to a supported decision making system required by article 12 CRPD?**

Cheolung Je<sup>1</sup>

<sup>1</sup> Korean Research Center for Guardianship and Trusts

Prof. Cheolung Je

Despite unprecedented economic growth and courageous strides and developments of political democratization, Korean societies have still suffered from various violations of human rights committed by citizens among civil societies, stemming from the hierarchic structure of families and societies and strengthened by various social policies of preserving hierarchic family structure rather than supporting equal relations of family members and developing their self-determination and responsibilities for their activities. One of such violations is that committed against persons with disabilities. Whereas rapidly grown-up disability movements in Korea have been advancing their human rights, those of persons with cognitive impairments to decision making abilities have not yet attracted full attentions from civil societies as well as government. That being said, since Korean ratified CRPD in 2008 and new adult guardianship system was enacted in 2011, which came into force as from July 2013, the right to self-determination of persons with decision making disabilities have become one of the most important social issues and debates. My presentation will focus on how Korean societies have been coping with many issues arising from Article 12 CRPD and how they have been struggling for improvements of their human rights, such as respect to the right of self-determination, advanced planning for future incapacity or future decision making disabilities, alternatives to full and limited guardianship, and so on. My presentation might contribute to the understanding of Korean society's characteristics of dealing with social issues and to international solidarity for the improvement of human rights of persons with decision making disabilities.

Paper ID: 46

## **Decision making in health care with cognitive disability**

Karen Williams<sup>1</sup>

<sup>1</sup> ADA Australia

Many States and territories have recently changed their legislation and forms on advance care directives, for end of life care and mental health treatment.

Increasingly, forms include a views and wishes/values section which could be filled out by people with impaired decision-making capacity. By comparison, the New Zealand form has an expansive values section.

Recently ADA Australia were funded by Queensland Health to provide education to consumers, carers, family and then separately to clinicians regarding the Advance Health Directive for Mental Health. This document has sections for both views and wishes, and for legal directives.

This project furthered my experience of tailoring health decision making documents with people with impaired decision making and their families.

Essentially, consumers stated, "what is the point of completing these documents as no one will ever read them".

Clinicians would say "how are we now expected to work with someone's views and wishes, as we have never done this before". The concepts of both substitute decision-making and supported decision making were foreign to many mental health professionals, who have the alternative of placing people under treatment orders.

Many clinicians intuitively have the skills to include the preferences of the consumer. Some have the knowledge to recognise the capacity question and understand the need to work in the relevant legal framework. Many clinicians are confronted by consumer choices and instinctively look for a way to control views and wishes. Many clinicians are uncomfortable with the role of an independent advisor for consumers.

## **Elder abuse and autonomy**

Karen Williams<sup>1</sup>

<sup>1</sup> ADA Australia

Much of the discussion in the community about Elder Abuse has been about raising awareness. There is increasing awareness of elder abuse but little in terms of coherent and supportive responses.

When working with older people who may be subject to abuse, our systemic conditioned responses often go to the guardianship framework. This reflexive response may or may not be relevant or indeed what the person themselves wants.

Our responses need to begin with the adult's views and wishes and bring in the appropriate supports based on their story and identified needs.

The barriers to working along these lines are:

- Ageism & Discrimination.
  - Views and wishes of older people less respected.
  - Rush to be protective which often realistically equates to residential aged care
- Residential Aged Care
  - Becomes permanent, in a practical sense
  - Health sector promoting diversion of frail older adults from the community
  - Often viewed as protective factor in the shadow of abuse
    - Tribunals reluctant to review decision making appointments once in aged care, despite complaints by the adult and other supporters.
- Insistence on formal decision-making arrangements by aged care sector.
  - This can result in overly restrictive and abusive attorneys having their decisions backed up by residential aged care providers, in the interests of speed and certainty.
- Lack of easy remedy
  - Too overwhelming for older adult to recover assets, property and to change decision makers.
- Overall focus is not about achieving outcomes for the older person, but placating them and concerned others by stating "not in immediate risk of harm".

Paper ID: 50

## **Comparing and sharing experiences - a lesson we can learn**

Eva Nachtschatt<sup>1</sup>

<sup>1</sup> Max Planck Institute for Social Law and Social Policy

Legal comparison serves as an important tool to gain fruitful insights to learn about the own legal system and those of other countries. Therefore, the current research looks comparatively at the systems of legal capacity and tries to oppose the legal terms in the Civil Law countries Austria and Germany and the Common Law country Australia (NSW). Legal capacity is one basic condition of legal acting. It encompasses legal standing and legal agency. The term legal capacity offers a broad meaning and impacts in all aspects of life. Legal participation is an elementary prerequisite for an inclusive society in the sense of the UNCRPD. Legal capacity, as a legal concept or a legal construction, has to be distinguished from the mental capacity as a basic human ability. Both, legal and mental capacities are no easy subjects to identify. The research takes in particular a look at the original term capacity and in a legal context; the content of a decision and its legal relevance in the sense of legal recognition; and the recognition of an expression of a wish, which can bring an enhancement to an expression of volition of a person in guardianship context. In Austria and Germany, taking supported decision-making aspects into account while assessing a person's ability could change their legal position. The way of approaching law and acts of parliament play an important role, which has a huge impact on the scope of individual rights and implies a value judgment.



Paper ID: 51

## **Protecting and supporting persons without mental capacity - the Singapore story**

Regina Ow<sup>1</sup>

<sup>1</sup> Ministry of Social and Family Development

Like many developed countries, Singapore's population is aging rapidly. Nearly 1 of 5 persons would be aged 65 and above by 2030, and the number of persons with dementia is expected to rise. To prepare for this changing demographic, Singapore has enhanced its legislation and services, to better protect persons without mental capacity.

### ***The Mental Capacity Act (MCA) and the Register for Lasting Power of Attorneys (LPAs)***

This part of the presentation would cover the Mental Capacity Act (MCA), with an emphasis on how the act has created a framework for the making and registration of a Lasting Power of Attorney (LPA). The LPA encourages individuals to plan early, and alleviates the stress and difficulties faced by loved ones, who would otherwise have to apply to the Court to be appointed as a deputy, in order to act as a proxy decision maker for a person without mental capacity. The MCA also established the role of the Public Guardian and her Office, which has as a key function, the setting up and maintaining of a LPA register.

### ***Protective Legislation and Support Systems in Singapore***

The other part of the presentation would touch on other relevant provisions in Singapore's legislation, such as the recently passed Vulnerable Adults Act (VAA), Penal Code, Maintenance of Parents Act and Women's Charter, and show how these, together with the MCA and other schemes, are designed to support vulnerable persons and their caregivers, and collectively offer protection to vulnerable persons in Singapore.

Paper ID: 52

## **The challenges of implementing supported decision making**

Christine Bigby<sup>1</sup>, Jacinta Douglas<sup>1</sup>, Shih-Ning Then<sup>2</sup>, Terry Carney<sup>3</sup>, Ilan Wiesel<sup>4</sup> and Elizabeth Smith<sup>1</sup>

<sup>1</sup> LaTrobe University

<sup>2</sup> Queensland University of Technology

<sup>3</sup> Sydney University

<sup>4</sup> The University of Melbourne

This symposium draws on a program of research about supporting decision making of people with intellectual disabilities or acquired brain injury that is funded by an ARC Linkage grant. Three papers will explore issues of supported decision making from different perspectives.

### Paper 1.

Numerous law reform agencies (LRA) in various countries have recommended that laws be changed to allow for forms of supported decision-making to be legally recognised.

This paper identifies the contribution of LRA reports and recommendations to the evolving body of knowledge in relation to supported decision-making. In particular, it analyses the rationales for LRA recommendations favouring the introduction of forms of legally recognised supported decision-making and the types of legal models of supported decision-making being recommended by LRAs.

### Paper 2.

A four-phase approach to development and evaluation of complex interventions was used to develop the La Trobe practice framework for support for decision making. The framework outlines the *steps*, *principles* and *strategies* involved in effective support for decision-making. It focuses on understanding the will and preferences of people with cognitive disabilities and guides those who provide support including families, support workers, guardians and health professionals.

### Paper 3

In the initial phase of trailing the effectiveness of training resources 60 dyads, of a person with cognitive disability and a decision-making supporter were interviewed. Supporters' understandings of their roles as decision supporters was interwoven with the other roles that they played in the person's life and there was often tension between these roles that the supporters - and decision makers - needed to navigate. This understanding points to a need for attention to provision of decision support by the NDIS and other service systems.

## **Supported decision making for health care and financial management: research from b. c. Canada**

Kathleen Cunningham<sup>1</sup>

<sup>1</sup> BC Law Institute and Canadian Centre for Elder Law

British Columbia's [Representation Agreement Act](#) (RAA) is recognized in commentary to Article 12 of the 2006 UN [Convention on the Rights of Persons with Disabilities](#) (UNCRPD). An adult may make a representation agreement (RA) authorizing a representative(s) to help the adult make decisions, or to make decisions on behalf of the adult, about personal care, routine management of financial affairs, major/ minor health care, and obtaining certain legal services. A RA can be made even if the adult is incapable of making a contract or managing the decisions covered in the agreement. The law provides for a number of safeguards to prevent abuse and undue influence by a representative.

There is little research in BC on how RAs work in practice for different populations. There is also limited guidance to adults, representatives and third parties on the roles, responsibilities and legal relationships that arise when decisions are made. There are no tools or resources to support the parties.

The role of supported decision making, both formal and informal, featured prominently in the CCEL's 2018 report on health care consent, and was the subject of research findings, recommendations for policy and law reform, and an educational video resource. The CCEL is also completing research into supported decision making as it relates to investment products and services. What law, policy and resources will be needed to help make supported investment decision making a reality for different populations?

This presentation reviews research methodologies for each project, findings and recommendations. Project web pages: <https://www.bcli.org/ccel-projects/work-in-progress>.

Paper ID: 55

## **2019 an OPA NDIS odyssey**

Matthew Rasmussen<sup>1</sup> and Megan Archer<sup>2</sup>

<sup>1</sup> Office of the Public Advocate, Victoria

<sup>2</sup> Office of the Public Advocate, Victoria

As Guardians at the Office of the Public Advocate (OPA) in Victoria, with over 50 years of experience between us, we have experienced both the positives and challenges of working with the NDIS. Although we effect change in people's lives on a daily basis nothing prepared us for the change from state-based funding to the NDIS. New rules, new forms, and new people - it's been a bit like Willy Wonka going through the tunnel!

In our role as guardians at OPA we have been able to secure significant funding packages that have seen near-new builds and refurbishments completed in record time. We have also had people and families in crisis being reminded that the NDIS is a funder not a provider. Services have promised the world and then disappeared.

In this presentation we examine four complex NDIS cases in which we have been involved as guardians. We then draw out from these experiences our reflections on how guardians, and others involved in the lives of people with complex support needs, can seek to ensure that the NDIS delivers on its promise of a better life for people with a disability.

Paper ID: 56

## **Talk up! talking up the rights of people with disability in remote NT**

Judy Clisby<sup>1</sup>

<sup>1</sup> Health and Community Services Complaints Commission NT

Aboriginal people in remote NT typically receive disability services through health clinics, which act as the "provider of last resort" for people with disability. Although some not for profit services provide limited services, there are no commercial operators.

The landscape is changing with the introduction of the NDIS, with existing services no longer funded. An identified risk in a thin (and frequently non-existent) market in remote NT is the potential for services to be offered by maverick or very new providers. It is accepted that few of the larger national operators have expertise in operating in very remote Aboriginal communities. The costs of such operations will also result in very few finding such a market attractive.

In this environment, it is essential that people receiving services and their families and communities know how to complain. The aim of the TALK UP project is to provide information about the importance of talking up and how to go about it.

Dr Christine Fejo-King, a respected Larrakia Elder consulted extensively with Aboriginal people with disability, their families and service providers throughout the NT. The result is a range of resources including a fun, catchy video, designed to inform and empower.

## **Guardianship hearings in ACT public hospitals: observations from hospital professionals**

Helen Bateman<sup>1</sup>

<sup>1</sup> The Canberra Hospital

Prior to October 2017, guardianship applications concerning hospital inpatients were heard at the ACT Civil and Administrative Tribunal's (ACAT) premises, consistent with other applications. This invariably denied the person's opportunity to be heard, created practical impediments for attendance of health staff and diminished the value of the hearing.

To address these difficulties, ACAT, in collaboration with The Canberra Hospital (TCH) and Calvary Public Hospital (Bruce), now hear inpatient applications at the applicable hospital. Hearings are held each Friday in each hospital, week about, to facilitate prompt hearing and determination of the applications. Attendance rates for the subject person have increased from approximately 42% to 94%. In most cases, weekly hearings have enabled earlier discharge of the patient and achieved significant reductions in health costs. Time from lodgement of application to hearing has reduced from approximately 40 days to 13 days.

Attendance of the subject person achieves a vastly superior understanding of the person's views and wishes about the application. It facilitates dialogue with health practitioners regarding the person's mental capacity and it improves health practitioners' understanding of whether, or not, an appointment of a guardian and/or manager (administrator) is necessary.

The proposed speakers from TCH and Calvary wish to conduct a concurrent session about the practical issues associated with the development and ongoing management of on-site hospital hearing's in the ACT and the observed benefits to all stakeholders (patients, families, carers and inter-agency collaborators).

Areas for improvement will also be examined, including a discussion about the role that on-site hospital hearings can play in achieving a better understanding of supported decision-making and when an appointment of a guardian and/or manager is not necessary.

Paper ID: 58

## **A tribunals role in end of life disputes: decision making and cultural contexts**

Julie Ford<sup>1</sup> and Susan Gardiner<sup>1</sup>

<sup>1</sup> QCAT

End of life decisions for loved ones can be stressful and traumatic. Our human and humane focus to protect and preserve the lives of our children is palpable. What happens when conflict exists between the family of a patient and the medical treating team, when a person is on life support and there is no chance of recovery? This paper explores the events that occurred leading up to an application to QCAT for the appointment of a guardian, the roles of the parties at the hearing and the outcome, whereby the application was dismissed. This is the story of a young indigenous woman in Queensland who sustained a traumatic brain injury after a suicide attempt. With a focus on supported decision making, what can be put in place when the adult is in a coma? How do we best support the family in making end of life decisions? What does the tribunal need to consider when the adult is an Aboriginal and/or Torres Strait Islander? In this case, the family accepted the need to make the end of life decision at the tribunal hearing. Their decision was made finally under the Statutory Health Attorney regime, but the journey to that outcome for the family was mired in conflict with the medical profession. The tribunal's processes and focus on the least restrictive option and on dispute resolution were critical to this outcome.

Paper ID: 59

**A study on treatment decision making process for individuals with mental illnesses in korea.**

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Korea enacted the Mental Health Act (MHA) in 1995 and implemented it in 1997. The law was based on a medical model and could not fully guarantee the self-decision making rights of individuals with mental illnesses (IMI). Under the MHA, Korea experienced a sharp increase in the number of involuntary long-term hospitalizations. In order to address the problems, Korea amended the MHA and enacted the "Mental Health and Welfare Act (MHWA)" in 2017. The MHWA endorses a recovery model and strictly defines the requirements for involuntary hospital admissions. As a result, the ratio of involuntary hospitalizations has decreased considerably. However, the number of hospitalized IMI, the number of discharged patients, and the number of inpatient beds are all remain without change, the reasons of which are unknown yet. In order to figure out why these are happening, an exploratory research will be done in an inpatient mental health care facility involving IMI and their significant others such as family, guardians, and professionals. Specific research questions are as follows. First, what is the current status and problems of treatment decision making process among IMI? Second, in order to promote voluntary treatment decision making, what should be done? The presentation will share the preliminary findings of the exploratory study in relation to the lives of Korean IMI using available empirical data on discrimination, abuse, and involuntary hospitalizations. Based on the prospective findings on the status and problems, future directions to support independent decision making of IMI will be discussed.



Paper ID: 60

## **Economic, social and cultural rights for adults with cognitive disabilities**

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Article 12 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) provides that persons with disabilities enjoy legal capacity equal with others and that they be supported to exercise such capacity. The imperative to introduce supported decision-making for adults with cognitive disabilities as the default practice has been widely embraced; but the practical way forward for people with profound and severe cognitive disabilities is far from clear. The United Nations Committee on the Rights of Persons with Disabilities has issued its General Comment No. 1 which interprets the CRPD as prohibiting substituted decision making in all guises and in all cases. The Australian Law Reform Commission amongst other commentators, proposes that substituted decision making be retained as "a last resort" and as a protective measure in "hard cases." But it is important for such representative decision making not to fall back into a paternalistic model. An approach which interprets article 12 in the context of the whole of the CRPD, applying the doctrine of indivisibility of human rights is proposed to enable a human rights-based approach to substituted or representative decision making in cases of severe and profound cognitive disabilities. It is proposed that an interpretation of article 12 through the lens of indivisibility would place the adult with impairment as the subject of rights - especially in upholding economic, social and cultural rights to housing, health and education - even where a representative may need to make a decision "as a last resort."

Paper ID: 61

## **A review of the do it yourself advance care directive**

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The Advance Care Directives Act 2013 in South Australia amalgamated two previous pieces of legislation into a new Act. It was designed to simplify the process of making enduring appointments of substitute decision makers, along with the options to outline values and preferences to guide decision making, and making legally binding healthcare refusals. Access was facilitated through the development of a Do-it Yourself Kit and a broad witnessing process.

Four years on, an evaluation of a community based volunteer information and support for those making a Do-it yourself Advance Care Directive demonstrates some of the benefits and challenges in this approach. This paper outlines findings regarding community promotion, the availability of peer support, secondary consequences resulting from increasing access, and outlines possible directions for reform in the 2019 parliamentary review.

## **Integrated model of care for responding to suspected elder abuse**

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In response to the findings of the Victorian Royal Commission into Family Violence (2016), the Victorian Government has co-designed an *Integrated model of care for responding to suspected elder abuse*, which is being trialled over 3 years at five health services in Victoria, Australia at a cost of \$6 million.

The *Integrated model of care* aims to strengthen and link elder abuse responses and support across health, aged, justice and family violence services, creating multiple entry points for older people and their carers and families to access services. This model is first of its kind in Australia and provides a client-centred, family-inclusive and least restrictive approach to older people experiencing elder abuse. It is located in health services in recognition of the fact that older people are more likely to disclose abuse within a health setting.

The four components of the *Integrated model of care* delivered in the catchment areas of each health service are:

- (1) Workforce training for clinical staff and partners of the trial health services to respond to suspected elder abuse.
- (2) A liaison officer to provide specialist clinical advice and secondary consultancy regarding complex discharge decisions for older people at risk of or experiencing elder abuse.
- (3) Counselling and mediation services (including financial counselling) to offer a therapeutic option/pathway for older people and their carers/families, helping to prevent escalation of abuse cases to the legal system and to maintain family relationships.
- (4) An Elder Abuse Prevention Network to work on key objectives such as raising community awareness of elder abuse and developing interagency protocols, referrals and intersection points for older people to access services.

Paper ID: 65

## **Sexual consent: getting to yes when the law says no**

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Section 216 of the *Criminal Code Act 1899* (Qld) is a discriminatory provision that makes it unlawful for any person to have sexual relations with a person who has "impairment of the mind". The provision treats people with disabilities less favourably by discouraging any person from having sexual relations with them, and by impeding the right of people with disabilities to make decisions about their sexuality. The definition of "person with impairment of the mind" in Queensland's criminal code is so broad that it captures people who do not have cognitive impairment and people who can understand and communicate decisions about sex. Unlike many other sexual assault provisions in relation to adults, section 216 relieves the prosecution of the onus to show that the complainant did not consent and that the accused knew that the complainant did not consent.

In this post-@MeToo moment, power and exploitation are central to debate about sexual relations, but section 216 provides protection from exploitation at the expense of legitimate sexual expression. There are ways for legislatures to protect people with disabilities from predatory sexual assault that are still consistent with the principle that people with disabilities have the right to exercise their legal capacity on an equal basis with others. Some law reform options are canvassed.

Paper ID: 66

## **National decision support pilot for access to the NDIS**

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DSS is undertaking a national pilot for the provision of advocacy and decision-making support for people interacting with the NDIS who have limited decisionmaking capacity and no alternative decision-making support such as family, friends or a guardian.

The expected outcomes are to:

- support the target group to access the NDIS and develop and implement a suitable plan;
- identify the number of eligible people requiring support; and
- inform policy and program development.

There is a cohort of people with disability who have not transitioned to the NDIS from existing state or territory services or who have done so but do not have people in their lives who can help them engage with the NDIA and assist them to develop and implement an individual plan.

The pilot will provide this support and assist the NDIA, DSS and state and territory governments to understand the number of people who require this decision-making support and the barriers that need to be addressed.

People eligible for the pilot will meet the following criteria:

- are over the age of 18 and are potential or current NDIS participants;
- have limited decision-making capacity; and
- have no other appropriate decision-making support such as a family member, carer or other significant person who is willing and able to support the person to make decisions.

DANA represents the advocacy organisations that are delivering the decision support and would like to present initial data and outcomes from the pilot

The OPA Vic and the OPG Qld are on the Reference group.

Paper ID: 67

## **Our changing population: implications for the demand for guardianship in Australia**

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Social and demographic change impacts on the nature and need for guardianship. Australia's population is ageing. At the time of the most recent Census, one in every six people counted were aged 65 or over. Over the past 20 years, the number of people in the very old age group (those aged 85 or older) has doubled to nearly half a million people. Many of these older Australians are living alone, while others have transitioned to residential aged care. With people living longer, the number of people living with a disability continues to increase, including those living with dementia, including Alzheimer's disease, which is now the second leading cause of death in Australia. At the same time, the last ten years have seen overseas migration become the main contributor to Australia's population growth, and Australia's Aboriginal and Torres Strait Islander population has reached close to 800,000 people.

Denise's session will draw on the range of Census, social and demographic data produced by the ABS to paint a picture of how Australia has changed over recent decades, and will look at recently released population projections, as context for the conference's exploration of the changing adult safeguarding environment.