

The University of Adelaide Law School
Law and Justice Internship Essay
Semester 2, 2023

To Include or Not to Include: The Potential Impacts on The Functions of The Public Advocate If the Principles of Supported Decision-Making Are Adopted into The *Guardianship and Administration Act 1993 (SA)*.

By Asirah Abdul Kadir (a1810177)

Word count: 4,093.

TABLE OF CONTENTS

Introduction..... 3

Part I: The Relevance of Supported Decision-Making

 A. International Obligation..... 5

 B. Changing Perceptions and Understanding..... 6

 C. Global and Local Movements..... 7

Part II: The Impact of Supported Decision-Making on the Public Advocate

 A. Little Change to The Public Advocate’s Powers and Functions..... 9

 B. Improves Cultural Compatibility..... 10

 C. Exposure to Legal Risks..... 11

 D. Increases The Workload of The Public Advocate..... 13

Conclusion..... 14

Bibliography..... 15

Introduction

As social and interdependent beings, humans depend on those around them to survive. From family members and friends to the delivery driver who delivers lunch, these relationships – whether direct or indirect – enable individuals to “participate in society and live with dignity”.¹ Yet, it is important to remember that this dependence is not limited only to physical tasks. Sometimes help is needed when it comes to making decisions too. According to PBS North Carolina, the average adult makes about 35,000 decisions every day.² These decisions may range from the very small, like what to have for breakfast, to the very big like buying a house and having kids. Evidently, the more complex the subject of the decision, the more assistance may be required.

For some, this assistance is sporadic and short-term, needed only when it comes to making the very big and very complex decisions. For others, assistance may be required more frequently. This is especially the case for people with cognitive and intellectual disabilities (hereafter ‘cognitive disabilities’) who might find it a lot more challenging to make decision on their own. For example, they might find it more difficult to understand the decision that is to be made, the information surrounding those decisions, as well as the potential consequences of making such decisions. Hence, they may require continued and prolonged decision-making support.

Even then, there are those with severe cognitive impairments who might “experience very limited ability to make decisions... even with support”.³ A common example is late-stage dementia where the person begins to find it difficult to understand what is being said and what is going on around them,⁴ rendering them incapable of making sound decisions. For them, there must be a system in

¹ Catalina Devandas-Aguilar, Special Rapporteur on the rights of persons with disabilities, *Report of the Special Rapporteur on the rights of persons with disabilities: Access to rights-based support for persons with disabilities*, UN HRC, 34th sess, Agenda Item 3, UN Doc A/HRC/34/58, (20 December 2016) 5.

² Frank Graff, ‘How Many Decisions Do We Make In One Day?’, *PBS North Carolina* (Web Page, 10 August 2022) <<https://www.pbsnc.org/blogs/science/how-many-decisions-do-we-make-in-one-day/#:~:text=And%20as%20your%20level%20of,are%20both%20good%20and%20bad>>.

³ Shih-Ning Then, Terry Carney, Christine Bigby and Jacinta Douglas, ‘Supporting decision-making of adults with cognitive disabilities: The role of Law Reform Agencies – Recommendations, rationales and influence’ (2018) 61 (November-December) *International Journal of Law and Psychiatry* 64, 71 [3.2.3].

⁴ ‘The later stages of dementia’, *Dementia Australia* (Web Page) <<https://www.dementia.org.au/about-dementia/carers/later-stages-of-dementia>>.

place to ensure that their welfare remains cared for when they could no longer make and communicate their own decisions. In Australia, that system is known as guardianship.

According to section 29 of the *Guardianship and Administration Act 1993* (SA) ('GAA'), guardianship orders may be granted if the South Australian Civil and Administrative Tribunal ('SACAT') is satisfied that the person in question has a mental incapacity⁵ which precludes them from making and communicating decisions about their health, safety, and welfare.⁶ Once a guardianship order is granted, the person effectively surrenders their decision-making rights as the guardian assumes the role of substituted decision-maker and makes those decisions on behalf of the person.⁷ This model of guardianship is known as substituted decision-making.

However, this model has been criticised for being outdated and prejudicial towards persons with cognitive disabilities. It perpetuates the view that a person could never make decisions or think for themselves if they have a cognitive impairment, which is untrue because decision-making capacities may fluctuate from time to time.⁸ Hence, there has been increasing pressure on the South Australian government to offer supported decision-making ('SDM') as an alternative system to guardianship. Even the South Australian Public Advocate strongly believes that SDM is "an important way to promote the [rights] of people with disability to make their own decisions and [to] enjoy equal recognition before the law".⁹

But change might not always be the most practical step forward, no matter how righteous and positive it looks on paper. Therefore, before the Public Advocate may lobby for an adoption of the principles of SDM into the GAA, it would be prudent to consider first the potential impacts the adoption might have on the functions of the Public Advocate. These impacts will be discussed in Part II of the paper after a brief discussion of the SDM's relevance to guardianship.

⁵ *Guardianship and Administration Act 1993* (SA) sub-s 29(1)(a).

⁶ *Ibid* s 3.

⁷ *Ibid* s 31.

⁸ South Australian Law Reform Institute, *Review of the Mental Health Act 2009 (SA)* (Report, February 2023) [3.5.9] <<https://law.adelaide.edu.au/ua/media/2437/mental-health-act-review-final-report.pdf>>.

⁹ Office of the Public Advocate South Australia, Submission to Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (15 June 2022) 3.

Part I: The Relevance of Supported Decision-Making

Supported decision-making is a regime where a person is supported to make decisions *for themselves* instead of having someone else make those decisions *for them*.¹⁰ The aim is to honour the decision-making rights of the persons with cognitive disabilities and to help them build their decision-making skills.¹¹ It is especially important to guardianship for several reasons, including:

A. International Obligation

As a State Party to the *United Nations Convention on the Rights of Persons with Disabilities* ('UNCRPD'),¹² Australia has an international obligation “to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities”.¹³ This obligation may be fulfilled by taking legislative and administrative measures to implement these rights into Australian laws,¹⁴ It may also be accomplished by “modifying... existing laws, regulations, customs, and practices that constitutes discrimination against persons with disabilities” to make it consistent with the articles of the *Convention*.¹⁵ Evidently, substituted decision-making is a discriminatory practice.

Article 12 of the UNCRPD is closely related to the principles of SDM. It recognises that “persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life”.¹⁶ Though not expressly defined within the *Convention*, “legal capacity” may be understood as the ability to sign contracts, vote, defend one’s rights in court, and make decisions about medical treatments.¹⁷ In other words, it is the capacity to make and legally enforce decisions on one’s own. Indeed, when

¹⁰ ‘About Supported Decision-Making’, *Center for Public Representation* (Web Page) <<https://supporteddecisions.org/about-supported-decision-making/>>.

¹¹ ‘Supported decision making policy’, *NDIS* (Web Page, 4 May 2023) <<https://www.ndis.gov.au/about-us/policies/supported-decision-making-policy>>.

¹² *United Nations Convention on the Rights of Persons with Disabilities*, GA Res 61/106, UN Doc A/RES/61/106 (adopted 13 December 2006).

¹³ *Ibid* art 4(1).

¹⁴ *Ibid* art 4(1)(a).

¹⁵ *Ibid* 4(1)(b).

¹⁶ *Ibid* art 12(2).

¹⁷ Andrew Byrnes et al, *From Exclusion to Equality: Realizing the rights of persons with disabilities*, Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol (2007) 89.

read together with Article 3 of the UNCRPD, it becomes clear that persons with disabilities do have the freedom to make their own choices even if it means being supported to do so.¹⁸ However, the existing framework of guardianship offends these Articles – and as a result, finds itself becoming a discriminatory practice – because it precludes people from exercising their rights to make decisions for themselves. So, State Parties should modify their guardianship laws to recognise this right by providing persons with disabilities access to supports that would help them exercise their legal capacities.¹⁹

One of the ways in which State Parties could effectively recognise this right is by replacing substituted decision-making with SDM.²⁰ In fact, the UN Committee on the Rights of Persons with Disabilities strongly believes that substituted decision-making must be abolished and be replaced with SDM for State Parties to comply with Article 12.²¹ Australia, however, has taken a more practical interpretation of this Article. It believes that the *Convention* allows for the co-existence of both regimes, so long as substituted decision-making is practiced as a last resort.²² This interpretation is guided by the fact that there are persons who could not make decisions for themselves – even with support – due to the severity of their impairments, so it becomes necessary for someone else to make those decisions for them.²³

B. Changing Perceptions and Understanding

The establishment of the UNCRPD was also responsible for changing the way disability is understood and perceived. Historically, people with disabilities – whether physical or cognitive – were alienated and kept hidden from society. Babies with disabilities were often placed in the care of institutions where they will remain there “from cradle to grave”.²⁴ Perhaps this was inspired by

¹⁸ Ibid (n 12) art 3(a).

¹⁹ Ibid 12(2), (3).

²⁰ Committee on the Rights of Persons with Disabilities, *General comment No 1: Article 12: Equal recognition before the law*, 11th sess, UN Doc CRPD/C/GC/1 (19 May 2014, adopted 11 April 2014) [26].

²¹ Ibid [28].

²² Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws* (Report No 124, November 2014) [2.57] <https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_124_whole_pdf_file.pdf>.

²³ Ibid [2.84].

²⁴ Rachel Carling-Jenkins, *Disability and Social Movements: Learning from Australian Experiences* (Routledge, 1st ed, 2020) 51.

Plato, who wrote that “deformed” children should be sent off to someplace secret and hidden.²⁵ If they were not concealed from society, then their disabilities were put on display for the amusement of others.

However, society has come a long way from ridiculing and alienating people with disabilities. Most prominently, there has been a change in the way cognitive disabilities are perceived. These types of disabilities were often thought to be absolute conditions, viewing persons with cognitive disabilities as eternally incapable of thinking for themselves. This is dangerously untrue, both medically²⁶ and in law. For example, in the case of *Hoffman v Waters*,²⁷ Justice DeBelle recognised that a person may have capacity even during a lucid interval. Unfortunately, the understanding of disability that underpins the GAA is still the outdated one as the *Act* fails to recognise the concept of fluctuating capacities.

C. Global and Local Movements

Due to this shift in understanding and perception, there has been growing support – both locally and internationally – for the establishment of SDM within guardianship laws. Certain States such as Ireland, the United States of America, and Canada have begun offering SDM as an alternative to substituted decision-making.²⁸ In Ireland, for example, they have introduced a three-tiered guardianship system through their latest *Assisted Decision-Making (Capacity) Act 2015*.²⁹ The new framework enables, and indeed encourages, persons with fluctuating decision-making capacity to enter into an agreement with another person who will support them make decisions.³⁰ Only where such arrangements are not appropriate or practicable will substituted decision-making be elected.³¹

²⁵ Plato, *The Republic* (Ktoczyta.pl, 1st ed, 2020) Book V.

²⁶ Peng Soon Ng, Lye Poh Aaron Ang and Nagaendran Kandiah, ‘Importance of mental capacity: time for greater attention and action’ (2015) 56(12) *Singapore Medical Journal* 646, 647.

²⁷ *Hoffman v Waters* [2007] SASC 273.

²⁸ ‘SDM as an International Movement’, *Center for Public Representation* (Web Page)

<<https://supporteddecisions.org/about-supported-decision-making/sdm-as-an-international-movement/>>.

²⁹ Assisted Decision-Making (Capacity) Act 2015 (Ireland).

³⁰ *Ibid* pt 3-4.

³¹ *Ibid* s 38.

Before this Act, Ireland employed a Ward of Court system which is akin to substituted decision-making with the Court making decisions on behalf of other people.³²

In Australia, Victoria takes the lead as it introduces SDM into its guardianship law. The *Guardianship and Administration Act 2019* (Vic) has been amended to include supportive guardianship orders as an alternative to its traditional guardianship order.³³ It gives persons with fluctuating decision-making capacity the choice between SDM and substituted decision-making. In Tasmania, the *Guardianship and Administration Amendment Bill 2023* (Tas)³⁴ is proposing to adopt certain SDM principles into its existing guardianship law. South Australia, on the other hand, is yet to make any legislative changes embracing SDM.

Part II: The Impact of Supported Decision-Making on the Public Advocate

Despite the overwhelming support for SDM, South Australia is yet to make any legislative moves to adopt this regime. Perhaps it is because of the challenges that come with amending the law. There are lots of discussions to be had and factors to be considered before an amendment can be made to ensure that it effectively reflects the interests of South Australians. One of those factors that will be discussed in this essay is the impact the principles of SDM would have on the functions of the South Australian Public Advocate.

As a guardian to 1,904 individuals,³⁵ it is important to contemplate the interests of the Public Advocate when discussing the adoption of SDM into the GAA. For the purposes of this essay, the extent of the adoption is merely an adoption of the SDM principles into the existing guardianship framework. It is not an alternative to, or a replacement of, substituted decision-making. In other words, the principles of SDM will operate within the substituted decision-making framework.

A. Little Change to The Public Advocate's Powers and Functions

³² Alice White, 'Wardship – Adults', *The Courts Service of Ireland* (Web Page, 3 March 2022) <<https://www.courts.ie/wardship-adults>>.

³³ *Guardianship and Administration Act 2019* (Vic) pt. 4.

³⁴ *Guardianship and Administration Amendment Bill 2023* (Tas).

³⁵ Office of the Public Advocate South Australia, *Annual Report 2022-2023* (Report, 22 September 2023) 15 <https://www.opa.sa.gov.au/data/assets/pdf_file/0006/955293/OPA-Annual-Report-22-23.pdf>.

As a substituted decision-maker, the Public Advocate may override the wishes and preferences of their clients if they believe that it is not reasonably possible or practicable to fulfil those wishes.³⁶ In other words, the Public Advocate makes the final calls on decisions pertaining to their clients. If the principles of SDM are absorbed into the existing substituted decision-making framework, then there might be a slight change in the way the Public Advocate functions. Namely, the Public Advocate would now have to assist their clients to make decisions for themselves first before the Public Advocate may make – or override – those decisions for them. This is quite different than simply deciding what is best for the person.

Some might argue that this is incompatible with the present functions of the Public Advocate because it is not in the Public Advocate's nature to entertain their clients' wishes. However, a quick read of the section 5 guiding principles would show that the Public Advocate does not act arbitrarily. Their decisions are always guided by the wishes and preferences of their clients, hence why they are required to, as best as they could, obtain the wishes and preferences of their clients and give paramount consideration to those wishes whenever they are making a decision on their clients' behalf.³⁷ This is not very different from supporting clients to make decisions themselves because both models require clients to be at the centre of the decision-making process. The only difference now is that the clients will play a more active role in said process.

The very nature of SDM is to support people to make their own decisions. This means SDM recognises that a person's capacity may fluctuate depending on the circumstances. As a result, some might also raise that the Public Advocate would have to start assessing their clients' decision-making capacities every time a decision is to be made, if SDM is adopted. However, it has been made very clear in section 29 of the GAA that SACAT is the body responsible in assessing capacities,³⁸ and because SDM will only operate within the existing framework of guardianship, SACAT will remain as the responsible body. Even then, a person is considered to lack decision-making capacity throughout the duration of their guardianship order once they are deemed as such

³⁶ Ibid (n 5) s 5.

³⁷ Ibid s 5(a), (b).

³⁸ Ibid (n 5) s 29(1).

by SACAT. So, it is never necessary for the Public Advocate to assess their clients' capacities anyway.

To conclude, most of the functions and powers of the Public Advocate will remain the same. The Public Advocate will still be the final decision-maker, and they will not be required to conduct capacity assessments. The only difference is that they will have to support their clients to make decisions for themselves before they could make those decisions for them.

B. Improves Cultural Compatibility

While substituted decision-making is not arbitrary, it is still discretionary in that it ultimately allows another to decide what is best for the person if it is not practicable to fulfil their wishes. This obviously limits the person's ability to exercise their autonomy and self-determination which may explain why First Nations peoples have reported a feeling of mistrust and suspicion towards the guardianship system.³⁹ Their scepticism becomes even clearer when history comes into play.

From the days of colonisation to the rejection of the Voice to Parliament, First Nations Australians have always struggled in their fight for autonomy and self-determination. For centuries they have been excluded from decision-making processes on matters pertaining their lives as a group and as individuals,⁴⁰ left only to be subjected to the whims of another. For example, they were made labourers against their will, had their children taken away from them against their will, and were displaced into missions and reserves against their will – all are clear violations of their autonomies and self-determination. While these unfair treatments no longer occur overtly, they are still perpetuated systemically. Take guardianship, for example: its practice of substituted decision-making naturally precludes First Nations peoples from the ability to make decisions for themselves.

³⁹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Roundtable Supported decision-making and guardianship: Proposals for reform* (Report, 16 May 2022) 43 <<https://disability.royalcommission.gov.au/system/files/2022-10/Roundtable%20-%20Supported%20decision-making%20and%20guardianship%20-%20Proposals%20for%20reform.pdf>>.

⁴⁰ 'Self-determination and Indigenous peoples', *Australian Human Rights Commission* (Web Page) <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/self-determination-and-indigenous#_ednref7>.

As a guardian to 205 First Nations peoples in the last year alone,⁴¹ it is important for the Public Advocate, and the guardianship system as a whole, to be sensitive to these matters. If the principles of SDM are adopted into the GAA, these clients would see their autonomies being returned to them because SDM promotes the exercise of autonomy.⁴² They would be able to reclaim their spot in decision-making processes concerning their health and wellbeing and with that, hopefully, they would be able to trust the guardianship system again. Therefore, adopting the principles of SDM into the GAA would at once improve the cultural compatibility of the state's guardianship system.

C. Exposure to Legal Risks

A person must be afforded the dignity of risk to really exercise their autonomy because these two concepts are inextricably linked to one another – how so? Well, one cannot be said to have exercised their autonomy if they were only allowed to make *certain* decisions with *certain* outcomes. To fully exercise their decision-making autonomy, a person should also be allowed to make decisions that are risky and that others do not necessarily agree with.⁴³ That is dignity of risk.

Unfortunately, even when persons with cognitive disabilities are supported to make decisions on their own, they are often precluded from exercising their dignity of risk. One of the reasons may be because supporters are influenced by the ableist assumption that people with cognitive disabilities could not truly appreciate the potential consequences of their decisions. Another reason could be because supporters simply do not want to be held liable for decisions that bear unfavourable outcomes. Certainly, the Public Advocate would want to avoid this liability because legal proceedings are costly and time-consuming.

But before it can be determined whether the Public Advocate will be exposed to legal risks by supporting their clients to make decisions, it would be prudent to inquire first whether those

⁴¹ Ibid (n 33) 15.

⁴² Ibid (n 20) [29].

⁴³ 'Capacity Toolkit', *Department of Communities and Justice* (Web Page, April 2020) 36 <<https://dcj.nsw.gov.au/documents/resource-centre/capacity-toolkit/capacity-toolkit.pdf>>.

decisions will be considered theirs or their clients'. If a decision is made by the client but it was considered as though it was the Public Advocate who made that decision, then the Public Advocate will be legally liable for any outcome of that decision. The current model of guardianship is a substituted decision-making one which makes the Public Advocate a substituted decision-maker. As a substituted decision-maker, any decisions made by the Public Advocate are considered to be their own decisions. So, even if the principles of SDM are adopted and the Public Advocate begins supporting their clients to make decisions for themselves, those decisions would still be considered as though it was made by the Public Advocate because remember, SDM is only operating within the existing framework of guardianship. This will inevitably expose the Public Advocate to legal liabilities if they support their clients to make decisions that consequently harm them.

The only way the Public Advocate could prevent legal liability is if the GAA is amended to include an immunity clause that precludes the Public Advocate from such liabilities. Inspiration can be drawn from section 41 of the *Advance Care Directives Act 2013* (SA) which notes that a person who was acting in accordance with an advance care directive will not incur any legal or criminal liability if they were acting in good faith and without negligence.⁴⁴ The GAA could benefit from adopting such clause as it assures the Public Advocate that they will be protected from any liabilities for supporting their clients. As a result, it gives the Public Advocate more room to be receptive towards their client's decisions – including the risky ones – instead of influencing them to decide a certain way.

D. Increases The Workload of The Public Advocate

As described earlier, the difference between substituted decision-making and SDM is that the latter requires an active involvement of both the Public Advocate and their clients in the decision-making process whilst the former typically only involves the Public Advocate. Of course, the Public Advocate must still obtain the wishes of their clients to inform their decisions,⁴⁵ but it is ultimately a one-person job. As it is a requisite of SDM that the Public Advocate supports their clients to make decisions, the Public Advocate should expect an increase in their workload should the

⁴⁴ *Advance Care Directives Act 2013* (SA) s 41(1).

⁴⁵ *Ibid* (n 5) s 5(b).

principles of SDM be adopted into the GAA. Consequently, this might affect the quality of the Public Advocate's work too.

What does it mean to “support” a person? According to Scope Australia,⁴⁶ the role begins by gathering information relevant to the decision-making process and presenting that information in a way that the person understands them. So, besides conducting research and consulting professionals, the Public Advocate would then have to modify the information they have gathered in a way that is accessible to their clients, such as summarising them into simpler words or using visual aids. The Public Advocate must also help their clients to understand the risks and benefits of those decisions before they can start realising them.⁴⁷ Unsurprisingly, this can be time-consuming because each client will require different modes of support. So, the Public Advocate would have to dedicate lots of time adapting themselves to these differences.

Communicating with clients may become challenging too. Some clients may be non-verbal; others may have their own unique way of communicating, so the Public Advocate would have to employ communication tools to facilitate the communications with their clients. Again, this can pose a strain on the efficiency of the Public Advocates' work because it is near impossible for the Public Advocate to adapt to the communication methods of each 1,904 of their clients, even with the help of delegate guardians. Unless the state government is prepared to channel more funds to support the Public Advocate, these practices – while noble and necessary – would only lead to a decrease in the quality of the Public Advocate's work because they could not be expected to properly cater to everyone's needs without adequate support. It would also cause undue delays to the provision of their services.

Conclusion

With support for SDM growing internationally and locally, the South Australian government should start to seriously contemplate the possibilities of amending the GAA to reflect these

⁴⁶ Duffield, L., Koritsas, S., Watson, J., and Hagiliassis, N., 'The role of supporters: Information sheet for direct support workers', *Scope Australia* (Web Page, 2016) <<https://www.scopeaust.org.au/uploads/main/Research-resources/3-Scope-Decision-Making-SupportWorkers-TheRole.pdf>>.

⁴⁷ Ibid.

changing norms, especially if they wish to get ahead of the race. However, the government must be careful not to act impulsively. Whilst the SDM regime imposes minimal impacts on the functions of the Public Advocate – and indeed, offers many benefits to their clients – it is just not practicable to expect the Public Advocate to practice SDM without the appropriate staffing and resources. Without careful thought, this might send the Office of the Public Advocate into disarray, and no one would be impacted by this mess more than the clients of the Public Advocate themselves. If the Parliament is serious about adopting SDM into the guardianship system, then it should consider funding the Office adequately so that they could appoint more delegates to effectively and efficiently support their clients to make decisions.

BIBLIOGRAPHY

A Articles/Books/Reports

Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws* (Report No 124, November 2014) <https://www.alrc.gov.au/wp-content/uploads/2019/08/alrc_124_whole_pdf_file.pdf>

Carling-Jenkins, Rachel, *Disability and Social Movements: Learning from Australian Experiences* (Routledge, 1st ed, 2020) 51

Ng, Peng Soon, Lye Poh Aaron Ang and Nagaendran Kandiah, 'Importance of mental capacity: time for greater attention and action' (2015) 56(12) *Singapore Medical Journal* 646

Office of the Public Advocate South Australia, *Annual Report 2022-2023* (Report, 22 September 2023) <https://www.opa.sa.gov.au/_data/assets/pdf_file/0006/955293/OPA-Annual-Report-22-23.pdf>

Plato, *The Republic* (Ktoczyta.pl, 1st ed, 2020) Book V

Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Roundtable Supported decision-making and guardianship: Proposals for reform* (Report, 16 May 2022) <<https://disability.royalcommission.gov.au/system/files/2022-10/Roundtable%20-%20Supported%20decision-making%20and%20guardianship%20-%20Proposals%20for%20reform.pdf>>

South Australian Law Reform Institute, *Review of the Mental Health Act 2009 (SA)* (Report, February 2023) <<https://law.adelaide.edu.au/ua/media/2437/mental-health-act-review-final-report.pdf>>

Then, Shih-Ning, Terry Carney, Christine Bigby and Jacinta Douglas, ‘Supporting decision-making of adults with cognitive disabilities: The role of Law Reform Agencies – Recommendations, rationales and influence’ (2018) 61 (November-December) *International Journal of Law and Psychiatry* 64

B Cases

Hoffman v Waters [2007] SASC 273

C Legislation

Advance Care Directives Act 2013 (SA)

Assisted Decision-Making (Capacity) Act 2015 (Ireland)

Guardianship and Administration Act 1993 (SA)

Guardianship and Administration Act 2019 (Vic)

Guardianship and Administration Amendment Bill 2023 (Tas)

D Treaties

United Nations Convention on the Rights of Persons with Disabilities, GA Res 61/106, UN Doc A/RES/61/106 (adopted 13 December 2006)

E Other

‘About Supported Decision-Making’, Center for Public Representation (Web Page)
<<https://supporteddecisions.org/about-supported-decision-making/>>

Byrnes, Andrew et al, *From Exclusion to Equality: Realizing the rights of persons with disabilities*, Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol (2007) 89

‘Capacity Toolkit’, *Department of Communities and Justice* (Web Page, April 2020)
<<https://dcj.nsw.gov.au/documents/resource-centre/capacity-toolkit/capacity-toolkit.pdf>>

Committee on the Rights of Persons with Disabilities, *General comment No 1: Article 12: Equal recognition before the law*, 11th sess, UN Doc CRPD/C/GC/1 (19 May 2014, adopted 11 April 2014)

Devandas-Aguilar, Catalina, Special Rapporteur on the rights of persons with disabilities, *Report of the Special Rapporteur on the rights of persons with disabilities: Access to rights-based support for persons with disabilities*, UN HRC, 34th sess, Agenda Item 3, UN Doc A/HRC/34/58, (20 December 2016)

Duffield, L., Koritsas, S., Watson, J., and Hagiliassis, N., ‘The role of supporters: Information sheet for direct support workers’, *Scope Australia* (Web Page, 2016)
<<https://www.scopeaust.org.au/uploads/main/Research-resources/3-Scope-Decision-Making-SupportWorkers-TheRole.pdf>>

Graff, Frank, ‘How Many Decisions Do We Make In One Day?’, *PBS North Carolina* (Web Page, 10 August 2022) <<https://www.pbsnc.org/blogs/science/how-many-decisions-do-we-make-in-one-day/#:~:text=And%20as%20your%20level%20of,are%20both%20good%20and%20bad>>

Office of the Public Advocate South Australia, Submission to Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (15 June 2022) 3

‘SDM as an International Movement’, *Center for Public Representation* (Web Page)
<<https://supporteddecisions.org/about-supported-decision-making/sdm-as-an-international-movement/>>

‘Self-determination and Indigenous peoples’, *Australian Human Rights Commission* (Web Page)
<https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/self-determination-and-indigenous#_ednref7>

‘Supported decision making policy’, *NDIS* (Web Page, 4 May 2023)
<<https://www.ndis.gov.au/about-us/policies/supported-decision-making-policy>>

‘The later stages of dementia’, *Dementia Australia* (Web Page)
<<https://www.dementia.org.au/about-dementia/carers/later-stages-of-dementia>>

White, Alice, ‘Wardship – Adults’, *The Courts Service of Ireland* (Web Page, 3 March 2022)
<<https://www.courts.ie/wardship-adults>>