

EDITORIAL

We are delighted to present the fourth issue of the International Journal of Mental Health and Capacity Law. The journal is now regularly receiving excellent submissions on mental health and capacity law and practice from across the globe, several of which are published in this issue, and clearly demonstrates the cross-sectorial demand for such a periodical.

Largely driven by the UN Convention on the Rights of Persons with Disabilities (CRPD)¹ and Committee on the Rights of Persons with Disabilities, but also increasingly by other international human rights commentators such as the current Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health², all jurisdictions are being challenged to consider what equality and non-discrimination in the enjoyment of human rights actually means for persons with lived experience of cognitive, intellectual and psychosocial disabilities. What this should, and must, look like in terms of assessments of mental capacity, respecting and supporting individual autonomy and inclusion continues to be an important source of discussion amongst and between academics, practitioners, policy-makers, legislators and persons with lived experience of cognitive, intellectual and psychosocial disabilities. In Scotland, my own jurisdiction, important questions have been asked in recent years about whether, and how, our capacity and mental health legislation does or can be made to respect CRPD standards³. This is also currently being considered by the Scottish Government in its plans to reform the Adults with Incapacity (Scotland) Act 2000⁴. The articles and review in this issue cover important aspects of the ongoing CRPD discussion.

With Article 12 CRPD in mind, Chris Maylea and Chris Ryan discuss in 'Decision-Making Capacity and the Victorian Mental Health Tribunal' their research into the extent to which the Victorian Mental Health Tribunal in Australia actually gives effect to Victoria's Mental Health Act 2014 requirement that it must consider a person's decision-making capacity when determining least restrictive treatment options and to respect a person's competent refusal of treatment in all but very limited circumstances.

Inclusivity, equality, non-discrimination and the removal of obstacles to rights enjoyment in the context of academic conference attendance and organisation are considered by Sarah Gordon and Kris Gledhill in 'What makes a 'good' conference from a service user perspective?' They examine relevant CRPD standards and identify a rights framework for those who experience psychosocial/mental impairment and who attend

¹ (United Nations [UN]) 2515 UNTS 3, UN Doc A/RES/61/106, Annex, GAOR 61st Session Supp 49, 65. (Adopted) 13th Dec 2006, (Opened For Signature) 30th Mar 2007, [Entered into Force] 3rd May 2008.

² United Nations Human Rights Council, Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health, 35th Session, 6-23 June 2017, UN Doc A/HRC/35/21.

³ Martin W, Michalowski S, Stavert J, Ward A, Ruck Keene A, Caughey C, Hempsey A and McGregor R, *The Essex Autonomy Project Three Jurisdictions Report: towards compliance with CRPD Art. 12 in capacity/incapacity legislation across the UK*, (June 2016); McKay C (Mental Welfare Commission for Scotland) and Stavert J (Centre for Mental Health and Capacity Law, Edinburgh Napier University), *Scotland's Mental Health and Capacity Law: the Case for Reform*, (May 2017).

⁴ Scottish Government, *Adults with Incapacity (Scotland) Act 2000: Proposals for Reform*, Consultation Paper, (January 2018).

academic conferences with corresponding obligations on those who organise conferences and/or those with responsibility for regulating conference attendance environments.

Difficult ethical, policy and practice issues that arise in relation to continuing treatment for patients with disorders of consciousness over an extended period of time are considered by Jenny Kitzinger and Celia Kitzinger in 'Why Futile and Unwanted Life-Prolonging Treatment Continues for Some Patients in Permanent Vegetative States (and What to do About it): Case Study, Context and Policy Recommendations. This discussion is contextualised by referring to the case of a patient named 'G' for the purpose of the article and their wider research concerning the treatment of severely brain injured patients. They ask whether such prolonged treatment actually reflects the patient's wishes and best interests and make recommendations as to how such situations may be addressed.

Finally, discussion of CRPD requirements in the context of criminal justice and criminal responsibility has tended to lag slightly behind CRPD discussion in relation to civil matters. However, this is starting to change and is reflected in Kris Gledhill's review of the Melbourne Social Equity Institute report, 'Unfitness to Plead and Indefinite Detention of Persons with Cognitive Disabilities' (published Melbourne, 2017) and the Justice Report 'Mental Health and Fair Trial' (published London, 2017). In this context, he notes and discusses the relevance of the right to equal access to justice in Article 13 CRPD, which requires procedural and age-appropriate accommodations, and the right to liberty in Article 14 CRPD, which requires equal protection against arbitrary detention and that a deprivation of liberty should not be justified on the basis of the existence of a disability.

In closing I would like to thank and acknowledge the support and input provided by the rest of our international and multi-disciplinary editorial team for this final issue of 2017 - Simon Burrows, Dr Piers Gooding and Dr Giles Newton Howes - as well as the overall guidance provided by Kris Gledhill as Editor-in-Chief. Our considerable thanks and appreciation must also go to our reviewers and to Hal (Zhan) Brinton (University of Leeds) for providing the proof-reading and formatting of this issue.

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